

# Exhibit 9-3

 ORIGINAL

268

UNITED STATES DISTRICT COURT NEW YORK  
FOR THE EASTERN DISTRICT OF NEW YORK

-----X

MARTIN TANKLEFF,

Plaintiff,

-against-

THE COUNTY OF SUFFOLK, K. JAMES McCREADY,  
NORMAN REIN, CHARLES KOSCIUK, ROBERT DOYLE,  
JOHN McLELHONE, JOHN DOE POLICE OFFICERS  
#1-10, RICHARD ROE SUFFOLK COUNTY EMPLOYEES  
#1-10,

Defendants.

666 Old Country Road  
Garden City, New York

December 12, 2012  
11:30 a.m.

CONTINUED EXAMINATION BEFORE TRIAL of K.  
JAMES MCCREADY, one of the Defendants  
herein, taken by the Plaintiff, pursuant to  
Federal Rules of Civil Procedure and Notice,  
held at the above-mentioned time and place,  
before Dolly Fevola, Notary Public of the  
State of New York.

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A P P E A R A N C E S :

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Hauppauge, New York  
BY: RICHARD T. DUNNE, ESQ.

ALSO PRESENT:

KATHY PASCHAL, Videographer

MARTIN TANKLEFF, Plaintiff

ROBERT DOYLE

NORMAN REIN

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STIPULATIONS

3

IT IS HEREBY STIPULATED AND AGREED, by  
and among counsel for the respective parties  
hereto, that the filing, sealing and  
certification of the within deposition shall  
be and the same are hereby waived;

8

IT IS FURTHER STIPULATED AND AGREED that  
all objections, except as to form of the  
question, shall be reserved to the time of  
the trial;

12

IT IS FURTHER STIPULATED AND AGREED that  
the within deposition may be signed before  
any Notary Public with the same force and  
effect as if signed and sworn to before the  
Court.

17

\* \* \*

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1 271

2 THE VIDEOGRAPHER: This is Disk  
3 6 of the continuation of the  
4 deposition of K. James McCready in  
5 the matter of Martin Tankleff versus  
6 the County of Suffolk and the United  
7 States District Court for the  
8 Eastern District of New York.

9 This deposition is being held  
10 at Barket, Marion, Epstein and  
11 Kearon at 666 Old Country Road,  
12 Garden City, New York on December  
13 the 12, 2012 at approximately 11:33  
14 a.m.

15 My name is Kathy Paschal, the  
16 videographer from Pro Video  
17 Productions located in Nesconset,  
18 New York, and I attest to record  
19 these proceedings fairly and  
20 accurately.

21 The court reporter today is  
22 Dolly Fevola, an associate with  
23 Fevola Reporting & Transcription  
24 Inc., located in Smithtown, New  
25 York.

1

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2                   Will counsel please introduce  
3                   yourselves and state the parties you  
4                   represent.

5                   MR. BARKET: I'm Bruce Barket  
6                   for Martin Tankleff.

7                   MR. POLLACK: Barry Pollack on  
8                   behalf of Martin Tankleff.

9                   MS. FREUDENPERGER: Emma  
10                  Freudenperger for Martin Tankleff.

11                  MR. DUNNE: Richard T. Dunne on  
12                  behalf of the County of Suffolk and  
13                  the individually named detectives.

14                  THE VIDEOGRAPHER: Will the  
15                  court reporter please swear in the  
16                  witness.

17                  MR. BARKET: This is a  
18                  continuation.

19                  THE VIDEOGRAPHER: Yes,  
20                  alright. He's already sworn in.  
21                  Please proceed.

22                  CONTINUED EXAMINATION BY

23                  MR. BARKET:

24                  MR. BARKET: Thank you. Good  
25                  morning, Mr. McCready.

1

K. J. McCready

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2

THE WITNESS: Morning.

3

Q I want to ask some questions,

4

if I can, about kind of the details of the  
interrogation.

6

Is there a difference in your  
mind between an interview and an  
interrogation or are they different?

7

A Well, usually an interview  
rolls into an interrogation depending on  
what happens.

8

Q So at some point in time, was  
Martin Tankleff being interrogated by you  
and Detective Rein?

9

A Yes.

10

Q Okay. Were you taking notes  
during that process?

11

A No. Norman was taking the  
notes.

12

Q Okay. Did you use his notes  
then to prepare the supplemental report?

13

A Did I what?

14

Q Use his notes to prepare the  
supplemental report?

15

A Yes.

1

K. J. McCready

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2

Q If we can take a look at the  
notes that we marked yesterday, do you have  
them right here? I think they're  
Plaintiff's 77. No.

6

A Seventy-nine.

7

Q Seventy-nine, sorry.

8

A Yes.

9

Q These are your notes, you said?

10

A Yes.

11

Q I want to refer you to one of  
the pages and I guess somebody labeled it.  
It says A15 at the bottom. Take a look at  
that.

15

A (Complying.)

16

Q That seems to contain  
information that you all say was acquired  
from Marty during this  
interview/interrogation; am I right about  
that?

21

A Yes, that says started at 9:40.

22

That's when we got to the headquarters.

23

Q Right. Well, it has in there,  
security, paranoid, save the turkey?

25

A I'm sorry, what?

1

K. J. McCready

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2

Q I'm just reading from the page.

3

A Which page?

4

Q A15.

5

A Oh, okay.

6

Q This looks like information  
that you all say you acquired from Marty  
during the period of time he was being  
interrogated at the headquarters, right?

10

A Yes, yes.

11

Q I've used the word precinct,  
it's actually not a precinct, right?

13

A No.

14

Q The homicide squad is in police  
headquarters in Yaphank?

16

A Yes.

17

Q If you turn to A16, it has,  
sees blood, father sleeps, mother other  
side, poker game, information about the  
will. This is all information that was  
acquired during the course of this  
interrogation, yes?

23

A Yes. Well, yes, during, yes.

24

Q Okay. So you did take some  
notes about it?

1

K. J. McCready

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2 A Yes.

3 Q Or these are notes --

4 A No, you're correct.

5 Q -- or these notes notes that  
6 you wrote up afterwards to kind of write  
7 down what you did as quickly as you could?

8 A No, this is during when we were  
9 interviewing him.

10 Q Okay. I don't see any notes  
11 here from you concerning what happened once  
12 you began to confront Marty, as we've  
13 described it, with what you all thought were  
14 inconsistencies.

15 A That's right. That's Norman  
16 kept those notes.

17 Q Was that a decision that you  
18 guys made to do it that way?

19 A I don't know how we arrived at  
20 it, actually. I think it was probably  
21 because I was doing most of the questioning.  
22 I'm not a hundred percent on that.

23 Q Okay. But at some point in  
24 time as you began to confront Marty, you  
25 stopped writing anything down?

1

K. J. McCready

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2

A Pardon me?

3

Q You stopped writing down  
things?

5

A Yeah, until the conversation we  
had with Shari on the phone.

7

Q Well, you wrote that down but  
that was sometime later, right?

9

A Right.

10

Q Okay. By the way, that  
conversation you wanted to record?

12

A Pardon me?

13

Q That conversation you all  
wanted to record?

15

A Yes.

16

Q And you actually tried to but  
Shari wouldn't let you?

18

A That's correct.

19

Q Okay. If I can refer to Rein's  
notes, I take it you used those to prepare  
your supplemental report?

22

A Yes.

23

Q So those are actually, I think,  
71 -- 60, 61 and 62. I want to refer you to  
a part of that.

1

K. J. McCready

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2

Did I understand that Mr. Rein  
or then Detective Rein was some kind of --  
Excuse me one second -- then Detective Rein  
was some kind or had been an emergency  
medical technician of some sort?

7

A Yes.

8

Q What was he?

9

A I don't know to be honest with  
you. I know he was involved in the fire  
department, I believe.

12

Q So he had some emergency  
medical training?

14

A I guess.

15

Q So he would have been familiar  
with language that's used by medical  
personnel?

18

A Probably.

19

Q Marty, of course, had no such  
training, right, that we're aware of?

21

A I have no idea.

22

Q You're not aware of any  
training that the 17-year-old had, right?

24

A No.

25

Q Now, you guys claim that you

1

K. J. McCready

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2

wrote these notes up contemporaneous with  
when Marty was speaking to you, right?

4

A Yes.

5

Q And obviously Detective Rein  
testified that he tried to write down what  
Marty was saying?

8

A Yes.

9

Q And that it was important to  
use Marty's words, not the words of what was  
in your mind, but to use what was coming out  
of his mouth, right?

13

A Right.

14

Q I want to show you what's been  
marked as Plaintiff's Exhibit 61 and I want  
to refer you to the bottom of the page  
there, and if you recall, yesterday we had  
some discussion about whether or not Marty  
told you about what the 911 operator told  
him or whether or not you listened to the  
tape and then wrote down what the 911  
operator said. You remember those  
questions? You remember talking about that  
yesterday?

25

A You got me confused here.

1

K. J. McCready

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2

Q Sorry, that was a confusing  
question. Withdrawn.

4

Do you remember yesterday we  
spoke about whether or not Marty told you  
that the operator told him to put pressure  
on his father's neck wound?

8

A Yes.

9

Q Okay. And you said that you  
knew about those instructions, not because  
you had listened to the tape but because  
that's what Marty said to you, right?

13

A Yes.

14

Q Okay. And Marty told you  
that -- I guess, according to you -- during  
the course of this interview where Rein was  
writing notes, yes?

18

A Yes.

19

Q And yesterday I showed you your  
notes and I said, show me where Marty said,  
put the pressure on the wound, and you said,  
well, I just did not write it down, but he  
said it; do you remember that?

24

A I didn't write it down. Norman  
wrote it down.

1

K. J. McCready

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Q What did Norman write down?

3

Can you read that about what he wrote down?

4

A Instructions is abbreviated.

5

Instruction 911 operator, put father on  
floor, et cetera. Compress wound with  
towel, elevate feet.

6

Q So your testimony is that  
Martin Tankleff used the word "compress  
wound"?

7

A Yeah.

8

Q That's the word he used --

9

A Yes.

10

Q -- when he was talking to you?

11

A Yes.

12

Q That's not Detective Rein's  
language, something that he wrote down  
afterwards being an EMT, that's something  
that the 17-year-old high school student  
said?

13

MR. DUNNE: I object to the  
form of that. It's calling for  
someone's state of mind but if you  
know.

14

A He's repeating what the 911

1

K. J. McCready

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operator told hem, as far as I know. I  
don't know what the 911 operator told him  
exactly. I have a good idea. I don't  
recall all the exact words. I haven't heard  
that tape in 25 years or whatever.

7

Q But at the time you had written  
your supplemental report on the 14th of  
September, you actually had heard the tape  
and relatively close in time to when you  
wrote the report, right?

12

A I don't know when I heard that  
tape. I'm not sure if I heard that tape  
until we got to the trial.

15

Q Well, yesterday you told us  
that you heard it before the 14th, now  
you're saying you don't know?

18

A I don't remember saying that  
yesterday.

20

Q Well, it's a good thing we have  
a court reporter. One of our memory is bad  
but that's all right.

23

At this point, you're saying  
that you don't think you heard the 911 tape  
until the trial?

1

K. J. McCready

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2

A Yeah. Or the hearing or at  
some point in time.

4

Q As a homicide detective, you  
would not have listened to the 911 tape  
shortly after the crime happened?

7

A Not necessarily, no.

8

Q Do you remember one way or the  
other?

10

A I don't recall right now.

11

Q Okay. Thank you.

12

A Okay.

13

Q You have your supplemental  
report there?

15

A Yes.

16

Q I think it's 69, actually.

17

Now, as you're interviewing Martin and he's  
telling you what took place, is there a  
reason why you, when he tells you something,  
you don't simply accept what he says and you  
challenge him on it or ask him questions on  
it over and over again?

23

A I think you're going to have to  
rephrase that question.

25

Q Sure. Martin had told you all

1

K. J. McCready

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2

several times what took place the morning  
that he woke up, right?

4

A Yes.

5

Q And you asked him to repeat it  
several times?

7

A Yes.

8

Q And in the interview process  
you asked him to go over and over it a  
couple of different times, right?

10

A Yes. Yes. Some things, yes.

12

Q Right. And you actually had  
him give a demonstration at certain points?

14

A Yes.

15

Q Is there a reason why you asked  
him to repeat the same events over and over  
again?

18

A With regard to demonstration,  
it was because it seemed impossible to me  
that he didn't get blood on that sweatshirt  
based on what he was telling us. And then  
the ridiculous attempt he made -- first he  
pulled his sleeves up and then he pulled his  
shoulders down. It was ridiculous what he  
was demonstrating to us.

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K. J. McCready

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Q Well, that was probably the  
fourth or fifth time you had asked him what  
happened after the 911 operator call. What  
I'm asking you is, why are you asking him to  
go over the same material again and again?  
Is it that you did not believe him?

7

A No, I didn't believe him.

9

Q Is that why you kept asking  
questions?

11

A Certainly.

12

Q So as a homicide detective  
you're not required to simply accept what  
somebody says to you. If you don't believe  
them, you are allowed to inquire further and  
ask them more questions about it, obviously,  
right?

18

A Sure.

19

Q Okay. Let's go back a second  
to your supplemental report and if we can go  
to Page 3, please.

22

A (Complying.)

23

Q Down at the bottom one, two,  
three, four lines from the bottom where it  
says, he was instructed by the 911 operator.

1

K. J. McCready

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2

A Yes.

3

Q Well, you wrote down he was instructed by the 911 operator to get a clean towel, apply pressure to the wound area, to lay his father down and elevate his feet?

8

A Yes.

9

Q Well, the 911 operator -- and we can play the tape if you'd like -- but the 911 operator says put pressure on the wound. The word that she uses is pressure; do you know that?

14

A No, I don't know that.

15

Q Why didn't you write down compress the wound the way that Rein did?

17

A I don't know. I mean some -- a lot of this is the sum and substance of what he said. I don't know exactly why but that's what he said.

21

Q You're certain that the supplemental report is a product of what Marty said, not information that you gathered later on?

25

A Right.

1

K. J. McCready

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2

Q You discussed with Marty the  
terms of his parents Will; is that right or  
his dad's Will?

5

A At some point in time, yes. I  
don't remember that.

7

Q Take a look at Page 8 --

8

A Page 8.

9

Q -- of your supplemental report.

10

A Yes.

11

Q It says, we had discussions  
about money.

13

A Yes.

14

Q And then it says, he knew he  
was the primary beneficiary if they would  
both die.

17

A Yes.

18

Q Didn't he also say something  
along the lines that his sister would only  
get a small amount of money?

21

A Yes.

22

Q Did he tell you that he  
actually wasn't going to be the beneficiary  
until he turned 25, that the money would be  
put in trust until then?

1

K. J. McCready

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2

A I don't remember him telling me  
that at all.

4

Q Well, he clearly --

5

A I've heard that since then, but  
I have no recollection of him saying it that  
morning.

8

Q He clearly had some  
understanding of his father's estate and the  
Will and what would happen, right?

11

A Yes.

12

Q You're saying he just didn't  
tell you the part about him not collecting  
the money until he is 25?

15

A I don't remember him saying  
that. Possibly he did, but I don't remember  
him saying that.

18

Q Okay. You obviously did not  
write down every single thing that Martin  
said, correct?

21

A Correct.

22

Q This is, as you put it, is the  
sum and substance of what he said. You did  
the best you could but you all elected not  
to record this conversation so we don't have

1 K. J. McCready

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2 a verbatim transcript of what was said,  
3 true?

4 A That's correct.

5 MR. DUNNE: I'll object to the  
6 form of that question.

7 A I told you before that was not  
8 our procedure at the time. Had it been our  
9 procedure, we would have done that.

10 Q All right. Now, as far as the  
11 ruse goes, the thing with his father, we  
12 talked about that a little bit yesterday but  
13 regardless of what Marty or an innocent  
14 person could or would have done in any  
15 circumstances, it worked here; didn't it?

16 The ruse worked?

17 A Yes.

18 Q You, in essence, got Marty to  
19 begin to speak to you about the crime in  
20 your view, right?

21 A Yes.

22 Q And it began with him wondering  
23 out loud whether or not he could have  
24 blacked out, whether or not he could have  
25 been possessed, literally whether or not he

K. J. McCreadie 290

2 could have done it without remembering,  
3 correct?

4 A Yes.

5 Q I don't mean this in a physical  
6 sense but mentally, you beat him, you broke  
7 him?

8 MR. DUNNE: I'm going to object  
9 to the form of the question.

A I don't like the word "beat."

11 Q But but --

12 A No, we did our job and we did  
13 it properly.

14 Q We talked about this for a  
15 while yesterday. Part of your job, in your  
16 view --

17 A Is to try to get him to roll  
18 over, yes.

20 A Yes

21 Q You literally convinced him  
22 that it was in his best interest to tell you  
23 about the crime --

24 A Yes

8 -- rather than continue to

1

K. J. McCready

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2

deny?

3

A Yes.

4

Q Right?

5

A Yes.

6

Q And then he began to give you details about the crime, right?

8

A Yes.

9

Q Now, you've had instances, haven't you, where individuals have minimized their role in a homicide, right?

12

A Much like Marty tried to do many times. He kept inflecting things and trying to minimize things. That's the normal occurrence in any --

16

Q We'll talk about what Marty did in a second, but just generally speaking, you've had instances where people have offered false defense claims, right? Yes, I killed him but I only killed him because I thought he was going to kill me, right?

22

A Yes.

23

Q People have offered up false explanations of being under some kind of mental strain or stress, right?

1

K. J. McCready

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2 A Yes.

3 Q People have offered up all  
4 kinds of "it was an accident" is probably  
5 something that frequently happens, right?

6 A Yes.

7 Q "I shot him but I didn't mean  
8 to shoot him," something along those lines?

9 A Yes.

10 Q So you have all kinds of  
11 instances where people minimize their  
12 involvement in a crime and the minimization  
13 offers some kind of defense; self defense,  
14 accident, mistake, things like that, right?

15 A Yes.

16 Q In Marty's particular case, he  
17 told you, according to you, that he planned  
18 to commit the murder, right?

19 A Yes.

20 Q He told you, according to you,  
21 that he set his alarm clock early so he  
22 would get up to commit the murder, correct?

23 A Yes.

24 Q He told you that he selected a  
25 weapon to commit the murder, correct?

1

K. J. McCready

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2 A Yes.

3 Q He said that he thought about  
4 it ahead of time and decided to kill both of  
5 his parents, right, according to you?

6 A Yes.

7 Q According to you, that he  
8 looked around and surveyed the house and saw  
9 where his parents were and then decided to  
10 go forward with his plan, right?

11 A Yes.

12 Q And according to you Marty  
13 selected his mother to be the first victim,  
14 correct?

15 A According to Marty.

16 Q And according to Marty he  
17 attacked his mother and beat her with a  
18 barbell and cut her throat and stabbed her a  
19 number of times, right?

20 A Yes.

21 Q And then after he murdered his  
22 mother or attacked his mother -- naked by  
23 the way -- according to him he said he did  
24 this naked because he didn't want to get  
25 blood on his clothing, right?

1

K. J. McCready

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2 A Yes.

3 Q According to you Marty says he  
4 walked down the hallway with the intent to  
5 kill his father, right?

6 A Yes.

7 Q And when he got down to where  
8 his father was, he hid the barbell and the  
9 knife behind his back, right?

10 A Yes.

11 Q And according to you he went  
12 around the back of his father and beat his  
13 father and slashed his neck, correct?

14 A Yes.

15 Q And then tried to cover it up  
16 by calling 911 and pretending to be panicked  
17 and pretending to offer his father first  
18 aid, right?

19 A Yeah.

20 Q So what defense did Marty build  
21 into that?

22 A What defense did he --

23 Q What was the minimization?  
24 What was the self defense? Where was the  
25 accident? Where was the mistake?

1

K. J. McCready

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A What he did was when he ran around the neighborhood screaming and yelling about his parents being murdered and trying to convince everybody like he's the poor innocent little boy here, which he was not and he's not, that's how he is minimizing it.

9

All his acting and his role of being grieved and cried out in five minutes or whatever. He didn't even cry when he was convicted. There's a picture of him in the newspaper, front page of Newsday, where he was, oh, looking like this, he didn't have a tear coming out of his eye.

16

Q You're not suggesting that he was not upset that he got convicted of killing off his parents and that he was going to spend the rest of his life in prison, are you?

21

A Let me tell you something, if I were wrongly convicted, I would be balling my eyes out.

24

Q I mean, I saw an interview of you someplace where you said that you cry.

1

K. J. McCready

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2 A I do.

3 Q Some people cry, right?

4 A Yes.

5 Q Some people don't. You're not  
6 saying that Marty when he got convicted  
7 wasn't upset, right? When he got convicted,  
8 you're not suggesting he wasn't upset, are  
9 you?

10 A I don't know if he was upset or  
11 what he was, but to me he was a big act in  
12 the courtroom there when he did that with  
13 that face.

14 Q It was an act, okay.

15 In any event, let me get back  
16 to the --

17 A Go ahead.

18 Q The minimization that I thought  
19 we were talking about is what somebody does  
20 when they offer up the confession. They  
21 just don't come out and say yeah, I did it.  
22 They offer the confession along with an  
23 excuse or defense?

24 A Well, that's when he starts to  
25 say, could I have blacked out, could I have

1

K. J. McCready

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2

been possessed.

3

Q But after that, according to  
you, he says well, no, I remember it and  
here's what happened, right?

6

A Yes.

7

Q So as he's telling you,  
according to you, the details of what took  
place, he's not offering any minimization.  
He's not offering any defense. He's telling  
you, according to you, I thought about it, I  
decided to do it and I did it?

13

A Yes.

14

Q And here's how I did it,  
according to you.

16

A Yes.

17

Q And there is not one single  
thing in there in the confession part of  
this that could be used as a defense; is  
there?

21

A No.

22

Q So you literally broke him  
mentally. You got him to spill the whole  
thing without any defense, any excuse, any  
nonsense?

1

K. J. McCready

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A Yes.

3

Q Right?

4

A However, what he told us was

5

not necessarily all true. We don't know  
that, that's why we go back and try to  
corroborate the confession later on. We  
don't -- I've had many confessions where  
they never tell you a hundred percent of the  
truth and then you go back and find out  
well, this isn't truth.

12

The guy who rapes and kills a  
girl, whatever, he admits to raping her  
vaginally but then he won't tell you about  
that he did her anally also. There's all  
sorts of things that happen like that.

17

Q Right, well, here Marty doesn't  
seem to have -- if your account is  
correct -- Marty doesn't seem to have  
held back at all; has he?

21

A We didn't finish the  
confession, did we? We were put on notice  
so there's a whole bunch of other questions  
we would have liked to have asked him.

25

MR. DUNNE: Objection.

1

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2

Q There was nothing stopping you from asking the questions as he was telling the story; was there?

5

A No, but as we were writing it down, as he went over it again, as we asked him questions, I was writing it down.

8

Q We just talked about the fact that if somebody is telling you something and you don't think it's true that you're free to challenge them on it and tell them it's nonsense and so forth?

13

A Yes.

14

Q So Marty's oral statements began around five of 12:00, correct?

16

A Yes.

17

Q You were not put on notice, according to you, until sometime after 1 o'clock? I think 1:22.

20

A 1:22.

21

Q So that gave you an hour and 25 minutes or so to challenge Marty's account if you didn't believe it, right?

24

A Yes.

25

Q And at any point when he's

1 K. J. McCready

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2 telling you that he decided to kill his  
3 parents the night before, that he went and  
4 got a barbell, that he got a kitchen knife,  
5 that he beat and stabbed his father and  
6 mother, at any point did you say to him,  
7 hey, Marty, I don't believe that. That's  
8 not true. That could not have happened?

9 A Not that I recall.

10 Q And just to go through this in  
11 some detail, it may take a minute or two,  
12 but it's probably worth doing.

13 Did Marty say to you that he  
14 wanted a lawyer during the course of this?

15 A No.

16 Q Did Marty say, I want to call a  
17 lawyer. I want to talk to my Uncle Mike?

18 A No.

19 Q Did you tell Marty that if he  
20 wants to speak to a lawyer that he's a  
21 criminal?

22 A That what?

23 Q That he's a criminal. That if  
24 he wants a lawyer that means he's a  
25 criminal?

1

K. J. McCready

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2

A I advised him of his rights and  
had him sign a rights card.

4

Q Did you tell Marty that if he  
wanted to speak to a lawyer he's a criminal?

6

A No, I read him his rights. He  
knew what his rights were.

8

Q You said you read him his  
rights at some point after you did this  
ruse, correct?

11

A Yes.

12

Q Marty says that didn't happen?

13

A I don't care what he said.  
That's his handwriting on the rights card.  
He signed it.

14

Q Is there a time on the rights  
card?

18

A No. That was my fault.

19

Q Is there a time anywhere, a  
stamp, a notation of when it was done?

21

A Yes, it's in Detective Rein's  
notes.

23

Q Right, but those aren't stamped  
either, right?

25

A Stamped?

1 K. J. McCready

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2 Q Stamped. We don't have any  
3 contemporaneous note that we can say you  
4 turned your notes in. Here's the notes I  
5 had that day. We don't know other than you  
6 telling us.

7 I'm not saying we should  
8 believe you or we shouldn't but other than  
9 you telling us we don't know when the rights  
10 card was signed; do we?

11 A You don't know. I know it.  
12 Detective Rein knows it. It was written  
13 that day.

14 Q But when you're preparing  
15 reports you know that this is all going to  
16 court and it's subject to challenge by  
17 attorneys and by courts and by prosecutors  
18 and defense lawyers, right?

19 A Certainly.

20 Q So at the end of the day what  
21 happened in that interview room, we have two  
22 choices. We can believe you, right?

23 A Yes.

24 Q And Detective Rein?

25 A Yes.

1

K. J. McCready

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2

Q Or we can believe Marty; is  
that fair?

4

A You believe who you want to  
believe and I'll believe who I want to  
believe.

7

Q I understand but everybody gets  
to make that choice; don't they?

9

A Yes, they do.

10

Q And that choice is something  
that you decided to do by setting this up in  
a way where it was going to be your word  
against the suspect's word, right?

14

A I didn't set it up. That's the  
way it worked out.

16

Q You didn't bring a court  
stenographer in to record what was being  
said; did you?

19

A No.

20

Q We said this several times.  
You didn't record this, correct?

22

A No.

23

Q Now, Marty says to us, and I  
think to courts and so forth when he's  
testified, that what happened was when you

1

K. J. McCready

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2

all asked him for the details he said, "I  
don't know. I didn't do this." Is that  
true?

5

A No, he's a liar.

6

Q Again, I understand your view  
and other people can have different views.  
Rather than --

9

A You asked me if it was true; I  
said no, he's a liar.

11

Q Okay. Well, what I was going  
to suggest to you is that the part no, it's  
not true is probably a sufficient answer to  
my question. If you want to refer to Marty  
as a liar, you can but really --

16

A He didn't tell the truth. He  
didn't tell the truth in the court.

18

Q Okay. So we could go back and  
forth, right? I mean people could say that  
you're lying and you can say that Marty is  
lying. I don't want to get into that kind  
of name calling. I want to ask questions  
about what happened, okay?

24

A I understand. Let me put it to  
you like this then. There are 12 jurors in

1

K. J. McCready

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2

that courtroom who listened to every word  
that I said, that Detective Rein said, all  
the other witnesses said, and even what he  
said when he took the stand with Mr.

6

Gottlieb, and they convicted him of murder,  
alright.

8

Q        Alright. And we can go back  
and forth because then four judges listened  
to the whole thing again and decided that he  
deserved a new trial. The attorney  
general's office looked at the whole thing  
again and decided not to retry.

14

I understand that the 12 jurors  
believed you, but you understand, don't you,  
that other people get to make an independent  
judgement of this?

18

A        My understanding is that  
nobody's saying that he's innocent, they  
just said give him a new trial. Nobody said  
he didn't do it. They just said give him a  
new trial.

23

MR. DUNNE: I got the  
clarification. It's here on record  
here. Just, you know --

1

K. J. McCready

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2

Q You understand people get to  
make their own judgement about who is  
telling the truth here --

5

A Of course.

6

Q -- so you can have your own  
view; other people are going to have theirs.  
What I want to ask you is what actually  
happened and then you're saying that  
something didn't happen, just tell me that.

11

Marty says that -- right at the  
beginning here on Page 11 -- Marty says that  
when you asked him what happened his  
response was, "I don't know. I don't  
remember doing this."

16

A That's what Marty says.

17

Q And you're saying that's not  
true; is that right?

19

A That's right.

20

Q Then when you asked him, how  
did he do it, who did he kill first, is it  
true that Marty said, "I don't know. I  
don't have any memory of this. I don't know  
what took place." Did he say that?

25

A No.

1

K. J. McCready

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2

Q He says that you told him,  
look, we know you killed your mother first,  
just say that.

5

A How would I know that?

6

Q Actually, we'll come back to  
that in a minute but for right now what I  
want to just do is ask you, did you tell  
him, "we know you killed your mother first,  
just tell us that's what you did"?

11

A No.

12

Q He says that when you asked him  
what weapons were used that you told him --  
excuse me. That when you asked him what  
weapons were used he said, "I don't know. I  
didn't do this. I don't have any memory of  
it." Did he say that?

18

A No.

19

Q He says that when you were  
asking him about this you told him, "we know  
that you used the barbells in your room and  
just tell us that." Did you say that to  
him?

24

A No.

25

Q He says that you told him that

1

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2

you knew that the watermelon knife was used.

3

Did you tell him that?

4

A No.

5

Q He says that all of the details  
in here, all of the details in here were  
more than suggested, were literally told to  
him by you and Detective Rein and that he  
simply adopted and said, "I guess so. If  
that's what you want to hear, I guess that's  
what I did."

12

A No.

13

Q That did not happen?

14

A No.

15

Q You're certain of that?

16

A Yes.

17

Q We talked before about the  
layout of the house, right?

19

A Yes.

20

Q Now, you know how big the house  
is, right?

22

A Yeah.

23

Q And if we can take a look at  
what was marked as Plaintiff's Exhibit 81,  
we knew that the murders occurred at some

1

K. J. McCready

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2

point after say 3 o'clock and before 6:11 or  
so, correct?

4

A Yes.

5

Q And you know that the father  
was found at the other end of a very long  
ranch-style house, right?

6

A Yes.

7

Q That Marty's room is literally  
across the hall from his mother, correct?

8

A Yes.

9

Q So that if Marty woke up in the  
morning and decided to kill his parents, he  
would have seen his mom first, right?

10

A Yes.

11

Q And that's something you knew  
when you were doing this interrogation,  
right?

12

A Yes.

13

Q Okay. Thanks. By the way, did  
you participate in a sound test in the  
house?

14

A Yes.

15

Q Tell us about that if you  
would.

1

K. J. McCready

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2

A I had one detective stood at  
one end down in the office area and I stood  
in the other and we both yelled at the top  
of our lungs and couldn't hear each other.

6

Q Didn't one of you stand in the  
master bedroom and one of you stand in  
Marty's room and do the same thing?

9

A Yes.

10

Q And you couldn't hear there  
either, could you?

12

A Yes, you could.

13

Q You could?

14

A Yeah.

15

Q Your testimony is that you  
actually could hear somebody yelling from  
the master bedroom and Marty's room?

18

A Yes.

19

Q Not that you couldn't hear?

20

A No, we could hear.

21

Q Was there testimony at the  
trial from experts, if you know, that did  
literally a sound test between those two  
rooms?

25

A I don't know. I'm not familiar

1

K. J. McCready

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2

with that.

3

Q Okay. Let me ask this.

4

According to the confession Marty  
supposedly -- Oh, by the way, the 5:35, when  
you went into Marty's room, didn't you push  
the alarm clock dial to see what time the  
alarm was set for?

5

A No.

6

Q Did Detective Rein do that?

7

A Not that I'm aware of.

8

Q Did Detective Sergeant Doyle?

9

A Not that I'm aware.

10

Q The alarm clock was there,  
right?

11

A I don't know. I don't  
remember.

12

Q You don't remember seeing the  
alarm clock?

13

A No.

14

Q In any event, the confession  
says that Marty woke up at 5:35, right?

15

A That's what he told us.

16

Q He actually told you initially  
that he woke up at 5:35 and laid in bed for

1

K. J. McCready

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2

a while then got up and went about the house  
and found his parents, right?

4

A Right.

5

Q But during the time we'll call  
the interrogation phase or the confession  
phase, he said he woke up at 5:35 and got a  
barbell and went to kill his parents with  
it, correct?

10

A You have the written --

11

Q The written?

12

A Yeah, the written confession.

13

MR. DUNNE: You mean the typed?

14

MR. BARKET: No, I think he  
means --

16

THE WITNESS: The handwritten.

17

MR. BARKET: Yeah, I actually  
do.

19

MR. DUNNE: I was not sure.

20

MR. BARKET: Can we have this  
marked, please, as an exhibit.

22

(Whereupon, Plaintiff's Exhibit  
97 was marked for identification.)

24

Q Here's a copy of the written.

25

When you say the written part of it, what

1

K. J. McCready

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2

this is is a -- The handwriting is yours; is  
that correct?

4

A Yes.

5

Q And that you're writing out  
something for Marty to sign, right?

7

A Yes.

8

Q But you didn't get all the way  
through it, a lawyer called the squad and  
said you have to stop questioning now and  
you had to stop questioning?

12

A Yes.

13

Q So I was asking you about what  
Marty supposedly said about what he did  
after 5:35, alright. You have the written  
statement there. If you need to refer to it  
feel free.

18

MR. DUNNE: I'm sorry, after  
5:35?

20

MR. BARKET: Yeah, after 5:35.

21

He woke up at 5:35.

22

Q He woke up at 5:35 and  
according to you he got a barbell from the  
weights that he has in his room, right?

25

A Yes.

1

K. J. McCready

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2

Q And that according to you he  
went and looked for both of his parents,  
correct?

5

A I believe he went and looked  
and saw his father sleeping in the chair.

7

Q Initially, according to you, he  
went to look for his parents in the bedroom  
but only saw his mother there, right?

10

A That's what he initially said.

11

Q Then he went to the other side  
of the house and found his father sleeping  
in the chair, right?

14

A Yes.

15

Q And then decided to kill his  
mother first and went back and attacked her,  
according to you?

18

A Yes.

19

Q That he attacked her with the  
barbell initially and cut her throat?

21

A Yes.

22

Q And then she was screaming and  
so he went to the kitchen to get a knife?

24

A Yes.

25

Q Well, if he cut her throat

1 K. J. McCready

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2 initially, why would he have to go back to  
3 the kitchen and get a knife?

4 A No, he did not cut her throat  
5 initially. He whacked her with the barbell.

6 Q Well, I'm reading from the  
7 continuation report, the supplemental report  
8 of Page 12. Is this what you wrote,  
9 "Initially, he was surprised" -- and I'm  
10 reading from the top of the page, one line  
11 down -- "initially he was surprised that he  
12 wasn't in bed with his mother and that the  
13 lights were on. I asked him what he did to  
14 his mother. He said he hit his mother with  
15 a dumbbell then cut her throat. I asked him  
16 how his mother was lying in bed. He said  
17 she was in bed on her back. He was asked  
18 how many times he stabbed her. He said he  
19 didn't know how many times he stabbed her.  
20 He volunteered that he got to her quickly."

21 And then later it says, "she  
22 fought with him. He said she was in pain  
23 calling for help saying, why, and help me."  
24 And then it goes on to say that he ran in to  
25 get a knife from the kitchen.

1

K. J. McCready

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2

A Yes.

3

Q Are those the things that Marty told you in the order he told them to you?

5

A Not necessarily. That's the sum and substance of what he told us.

7

Q So they are not in the correct order there?

9

A I said not necessarily. I mean he told us both things. He ran to the kitchen to get the knife after he hit her with the barbell.

13

Q Okay. And then after he attacked his mother he went down the hallway naked carrying the weapons that he just used?

17

A Yes.

18

Q Those weapons would have had to have blood on them, no?

20

A Yes.

21

Q In fact, the knife, whatever was used to cut Mrs. Tankleff's throat, they say nearly decapitated but it was a deep neck wound; wasn't it?

25

A Yes.

1

K. J. McCready

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2

Q There would have been a  
tremendous amount of blood associated with  
that, correct?

5

A Yes.

6

Q And the beating about her head  
that would have also been a tremendous  
amount of bleeding or blood, right?

9

A Yes.

10

Q And Marty is naked. He doesn't  
have any clothing to absorb the blood that  
would have gotten on him, correct?

13

A Yes.

14

Q So you're saying that Marty's  
naked, carrying two bloody weapons, walked  
the length of the house, and then walked  
into his father's room, correct?

18

A Yes.

19

Q And then he walked around  
behind his father and beat and stabbed him?

21

A Yes.

22

Q So now the weapons would have  
both the mother's blood on it and the  
father's blood on it, correct?

25

A Possibly, yes.

1 K. J. McCready

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2 Q When you say possibly, is there  
3 anyway --

4 A Because I don't know what he  
5 did in between. I don't know. He never  
6 told us. I don't know what he did when he  
7 went from the bedroom to the father's  
8 office. He could have done anything at that  
9 point in time. He might have had a towel  
10 with him or something. I don't know.

11 Q Here's the thing. We can all  
12 sit around and fantasize and speculate and  
13 make up scenarios of what he could have  
14 done, but the only thing we have is his  
15 account now, and it's been that way since he  
16 left your presence in that room that he  
17 didn't do this, and your account of what he  
18 supposedly told you?

19 A Yes.

20 Q So what he supposedly told you  
21 is that he walked naked from one end of the  
22 house to the other carrying two weapons  
23 dripping with blood, right?

24 A Yes, but as I said before, you  
25 don't always get a hundred percent out of

1 K. J. McCready

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2 these guys. I don't think I've ever had --

3 Q You think that there was some  
4 part of that that was minimizing Marty's  
5 role according to you. That somehow him  
6 walking naked with two weapons dripping with  
7 his mother's blood to go attack his father  
8 somehow was minimizing things?

9 MR. DUNNE: I'm objecting to

10 the form of that last exchange. Go  
11 ahead.

12 A I don't know. Anything is  
13 possible.

14 Q Of course anything is possible  
15 but we're kind of stuck with the things that  
16 we can prove or the things that people told  
17 us, right? We're not allowed to sit here in  
18 any setting and make up stuff.

19 MR. DUNNE: I'm objecting to  
20 the colloquy here. You can continue  
21 the questions.

22 Q Marty told you that he walked  
23 dripping with blood from one end of the  
24 house to attack his father?

25 A Where does it say he's dripping

1

K. J. McCready

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2

with blood.

3

Q Wouldn't the weapons have to  
have blood on them?

5

A They might have blood on them,  
it doesn't mean dripping with blood. If it  
was dripping with blood, I think we would  
have found blood when we searched.

9

Q If Marty had done what you said  
he said he did, right?

11

A That doesn't mean that the  
thing was dripping with blood.

13

Q It means it's possible that the  
knife and the barbell didn't have blood on  
them or it was not dripping off?

16

MR. DUNNE: I object. He  
offered an answer to that and you've  
already commented on the answer he  
gave you for that.

20

Q In any event, Marty is walking  
carrying the two weapons having not told you  
that he somehow cleaned them off before he  
attacked his father with them, right? He  
didn't tell you that?

25

A No.

1

K. J. McCready

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2

Q And, in fact, you found nothing  
in the house at all indicating that he  
cleaned off those weapons with his mother's  
blood on them; did you? There's no towel?

6

A No.

7

Q Then he says he walked to the  
other end of the house and attacked his  
father with the same two weapons?

10

A Yes.

11

Q If what his confession is is  
true, he is now walking back to the other  
end of the house to take a shower carrying  
weapons, still naked, with the blood of his  
mother and his father on him, right? That's  
what the confession says; doesn't it?

17

A Yeah, but --

18

Q That's your account of things,  
yes?

20

A Yes, that's what happened.  
That's what he told us, yes.

22

Q Okay. And then he showers,  
correct?

24

A Yes.

25

Q And then he returns the knife

1

K. J. McCready

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2

next to the watermelon, right?

3

A Yes.

4

Q And somehow the knife then gets  
watermelon on it, right?

5

A Yes.

6

Q So we know that that literally  
had watermelon on it, right?

7

A I do now.

8

Q At the time, it just was a  
pinkish substance, correct? We didn't know  
what it was when you were taking Marty's  
confession?

9

A I don't remember first time I  
saw that knife.

10

Q And then you go back, he goes  
back, and he lies down for a bit, correct?

11

A Yes.

12

Q According to you that's what he  
said he did, right?

13

A Yes.

14

Q And thought about what to do,  
right?

15

A Yes.

16

Q And then wakes up and calls

1

K. J. McCready

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2

911, right?

3

A Yes.

4

Q So that the timing for this would have been about -- say 9:35 so about 6 to 6:11 so about 36 minutes or so?

7

A Yes.

8

Q So in 36 minutes Marty did all of these things and erased any forensic trace to him and being involved in this crime?

12

A Yes.

13

Q Did Marty have some kind of training in forensics that you're aware of?

15

A I have no idea. I only told you what he told us about taking a shower and washing his stuff off.

18

Q You all searched the drain; didn't you?

20

A Yes.

21

Q And you searched the drain because you know from your experience in investigating homicides that the drain has all kinds of material in it and traps in it that can collect things so when you wash

1 K. J. McCready

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2 something off it gets trapped in the drain?

3 A Unless there is something in  
4 that drain then it might catch the blood,  
5 but if there is nothing in that drain that's  
6 going to wash right away.

7 Q Wouldn't there still be traces  
8 of hair, or flesh, or blood on the traps of  
9 the drain?

10 A No. In the trap? Why would  
11 there be?

12 Q Why did you search for it?  
13 A Because it's a good thing to  
14 do.

15 Q Okay. And you found nothing?  
16 A We searched for it to  
17 corroborate what he had told us.

18 Q And you found nothing?  
19 A Yes.

20 Q So when you went -- After you  
21 took this statement from Marty and you went  
22 out to try and corroborate the things that  
23 you say he told you, it turns out that the  
24 knife had no traces of blood or tissue on  
25 it, correct?

1

K. J. McCready

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2

A That's correct.

3

Q Turns out that in all likelihood his father was killed first, not his mother, correct?

6

A I don't know.

7

Q Well, there's blood from the father in the room where the mother was, but no blood from the mother in the room where the father was, true?

11

A Yes.

12

Q So in all likelihood his father was beaten and stabbed first and his blood was transferred to the mother's room, correct?

16

A That's a possibility.

17

Q And you analyzed the barbells as well and you found no traces of blood or hair or human tissue in the barbell, correct?

21

A Correct.

22

Q And nothing in the drain, correct?

24

A Correct.

25

Q And the blood that was found on

1

K. J. McCready

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2

Marty, we talked about yesterday, was his  
father's blood, right, on the shoulders?

4

You checked that out overnight?

5

A No.

6

Q So --

7

A I took your word for it.

8

Q Thanks. So when you went out  
to corroborate the details of how these  
murders supposedly took place, none of it  
matched?

12

A It wasn't the first time;  
probably won't be the last time.

14

Q Well, whether it was the first  
time or the last time, this time none of it  
matched, correct?

17

A Correct.

18

Q You all searched -- and I say  
you all, I mean the police searched the  
yard, correct?

21

A Yes.

22

Q You searched the cliff,  
correct?

24

A Yes.

25

Q You searched the house,

1

K. J. McCready

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2 correct?

3 A Yes.

4 Q You searched every -- You  
5 looked at every possible weapon in the  
6 house; every hammer, every instrument that  
7 could possibly be used as a weapon, every  
8 knife, correct?

9 A I believe so.

10 Q None of that, nothing in the  
11 house, nothing outside, nothing on the  
12 bluffs, nothing anywhere had any traces of  
13 Arlene Tankleff's blood or Seymour  
14 Tankleff's blood; is that right?

15 A That's correct.

16 Q So as far as corroborating what  
17 he supposedly told you, there is nothing to  
18 corroborate, correct?

19 A No.

20 Q No, there is not anything to  
21 corroborate. I am correct about that, yes?

22 A Yes.

23 Q As far as what information was  
24 available to you at the time that you were  
25 taking this confession from Marty, the

1

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2

information was available to you -- and when  
I say to you I mean to you or police  
officers with whom you had contact, okay.

5

You had the ability to see the  
layout of the house, correct?

7

A Yes.

8

Q You could see that Marty's room  
was right across from his mother's room,  
correct?

11

A Yes.

12

Q You knew that Arlene Tankleff's  
throat was cut, yes?

14

A Yes.

15

Q You knew because you called  
Pfalzgraf, I think, that the father was  
attacked and bludgeoned and cut, right?

18

A I knew that from Pfalzgraf,  
yes.

20

Q Because he told you about it,  
right?

22

A Yes.

23

Q So the details of the  
confession that are here is all information  
that was -- Let me finish. You also knew

1 K. J. McCready

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2 about the knife; didn't you? The knife was  
3 out there for you to see, whether or not you  
4 remember seeing it or not, it was not hidden  
5 from your view, right?

6 A No.

7 Q The barbells that were in his  
8 room they were in plain site; were they not?

9 A I didn't see any barbells.

10 Q I didn't ask if you saw them, I  
11 asked if they were in plain sight?

12 A I don't know. I don't know  
13 where they were.

14 Q In any event, you were in  
15 Marty's bedroom -- I'll show you pictures in  
16 a second -- nobody stopped you from looking  
17 around, right?

18 A No.

19 Q You could see whatever you  
20 could see, yes?

21 A Yes.

22 Q In fact, you're not just there,  
23 as we talked about yesterday, wandering  
24 through, you're there specifically to look  
25 for evidence of a crime, right?

1

K. J. McCready

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2 A Yes.

3 Q You're one of the more seasoned  
4 homicide detectives, correct?

5 A Yes.

6 Q And you're doing your job which  
7 you're good at?

8 A Yes.

9 Q Same thing when you're in the  
10 kitchen looking around in the kitchen,  
11 correct?

12 A Yes.

13 MR. BARKET: Could we have this  
14 marked, please, as 98.

15 (Whereupon, Plaintiff's Exhibit  
16 98 was marked for identification.)

17 Q Could you take a look at what's  
18 been marked as Plaintiff's Exhibit 98.

19 A Yes.

20 Q Do you recognize that?

21 A I recognize the photograph now.  
22 I see the barbells down here (indicating).

23 Q Right.

24 A I don't remember seeing --  
25 taking note of that that morning.

1

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2

Q Whether you recall or not

3

making a note of it, the barbells were there  
in plain sight for you and any other police  
officer or detective who wandered through to  
see, yes?

6

A I guess so.

8

Q And take your time, look at it  
as long as you'd like.

10

A Go ahead.

11

Q We spoke yesterday about Arlene  
Tankleff's wounds and you indicated that you  
went in and you observed the body, correct?

14

A Yes.

15

Q Now, again, this is not the  
first time you've observed a body at a scene  
of a murder; is it?

18

A No.

19

Q You have training at this? You  
have experience with this?

21

A Right.

22

Q I think you said you were  
involved in almost 300 homicides?

24

A Yes.

25

Q In this house, there is the

1

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2

blood stains in the father's room, correct?

3

A Yes.

4

Q And at the time you were doing  
the walk-thru the other evidence is the dead  
body of Arlene there, correct?

5

A Yes.

6

Q In fact, in terms of evidence  
in the house, really Arlene's body is the  
most important thing there; isn't it?

7

MR. DUNNE: I'll object to the

8

characterization but go ahead and  
answer that.

9

A Yes, I guess.

10

Q Sure. You know that there's  
two people that have been attacked. There's  
no obvious -- There's a dead body. You're  
looking at the dead body, right?

11

A Right.

12

Q You said you examined it  
closely enough to see the wound cut on her  
throat, correct?

13

A Yes.

14

Q And, of course, the  
photographers who's just taking pictures of

1 K. J. McCready

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2 her, they're not moving her around before  
3 they take the pictures, right?

4 A Right.

5 Q They obviously take the  
6 pictures just as you find the person and  
7 then later on when the medical examiner  
8 comes she's moved, correct?

9 A Yes.

10 Q So you can see what the  
11 pictures depict, the front of her face, her  
12 chest and so forth, right?

13 A Yes.

14 Q You couldn't see her back;  
15 could you?

16 A No.

17 Q You couldn't see the back of  
18 her head or her back, correct?

19 A No.

20 Q And we've talked a little bit  
21 about where the blows were on her head and  
22 remember yesterday I said to you that part  
23 of her left ear was actually smashed off?

24 A Yes.

25 MR. BARKET: Can I have this

1

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2

marked.

3

(Whereupon, Plaintiff's Exhibit  
4 99 was marked for identification.)

5

MR. DUNNE: This is an autopsy  
6 photo if I recall, correct.

7

MR. BARKET: Yes, it is. Why  
8 don't we do this one while we're at  
9 it.

10

(Whereupon, Plaintiff's  
11 Exhibits 100 through 105 marked for  
12 identification.)

13

Q Have you seen the autopsy  
14 photographs?

15

A No.

16

Q You never looked at them?

17

A No.

18

Q Okay. Let's do that.

19

MR. DUNNE: 101 and 102.

20

MR. BARKET: Mr. Dunne, you've  
21 seen the autopsy photographs, I take  
22 it?

23

MR. DUNNE: I have, yes.

24

MR. BARKET: You recognize  
25 these as the autopsy photographs?

1

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2

MR. DUNNE: Yes, I do.

3

Q Let's start off with 100. Take  
a look at that. You see what's depicted  
there?

6

A Sure.

7

Q That's Arlene's head shaven,  
correct?

9

A Yes.

10

Q With a number of head wounds,  
correct?

12

A Right.

13

Q One being almost on her  
forehead in the top, correct?

15

A Yes.

16

Q Several being on the left side  
of her head, correct?

18

A Yes.

19

Q And one with her ear, clearly,  
a piece of it missing from a blow, correct?

21

A Yes.

22

Q And, in addition to that, you  
know that there were wounds in the back of  
her head as well, 102, right?

25

A Yes.

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2 Q So when you're in the room --  
3 and I showed you pictures yesterday of  
4 Arlene -- you're free, and so was, I guess,  
5 Detective Sergeant Doyle or anybody else who  
6 went there, to examine her and look at her,  
7 and you said you noticed her throat cut?

8 A Yes.

9 Q And whether you recall seeing  
10 it or not, there's nothing preventing you  
11 from seeing the obvious wounds to the left  
12 side and the top of her head; was there?

13 MR. DUNNE: I'm going to object  
14 to the form of the question on a  
15 number of grounds but go ahead and  
16 answer it as best you can.

17 A No. As I pointed out to you  
18 yesterday, that picture is taken with a  
19 flash. I did not see that.

20 Q Well, when you say it was taken  
21 with a flash, I thought you said the  
22 lighting conditions in the room were  
23 excellent?

24 A I said the lighting in that  
25 room was fine, that he should have been able

1

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2

to see his mother when he originally --

3

Q But you, as a trained homicide  
detective, should not have been able to see  
that her ear was missing, that her head was  
smashed in?

7

MR. DUNNE: I'm going to  
object, Counselor. We went through  
this for about 15 minutes here  
today. I mean it's on the record.

11

Q In any event, the information  
there about her head wounds was available to  
you; wasn't it?

14

A When?

15

Q At the time that you were  
looking at her and at the time that you were  
interrogating Marty.

18

A We didn't know what all her  
wounds were. I don't think we found that  
out until 5 or 6 o'clock that night.

21

Q Well, you didn't know about the  
wounds in the back before 5 or 6 o'clock  
that night, right?

24

A I didn't know about -- The only  
thing I observed, to me, is it looked like

1

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2

someone had just slashed her throat.

3

Q The confession says,

4

interestingly, the confession says that he  
hit her about the head but it doesn't say  
anything about any wounds to her back,  
right?

7

A No.

9

Q Or to the back of her head,  
correct?

11

A No.

12

Q Clearly, what was not available  
to you at the time that you were  
interrogating Marty is the wounds that she  
ended up being true that she had on her  
back, right?

17

A No.

18

MR. DUNNE: I object to the  
form. Go ahead.

20

Q You didn't know when you were  
interrogating Marty that her back was slit  
open; did you?

23

A No.

24

Q You didn't know when you were  
interrogating Marty that her back -- she had

1

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2

been stabbed; did you?

3

A That she had been what?

4

Q Stabbed in the back.

5

A No, only what he told me that  
he stabbed her.

7

Q He didn't tell you he stabbed  
her in the back even according to you.

9

A No, oh, no.

10

Q The confession, according to  
you, only talks about blows to the head and  
her throat cut, right?

13

A Yes.

14

Q Because at the time that you  
interrogated him you hadn't seen, nor had  
any of the police officers seen the wounds  
on her back; had you?

18

A Not that I'm aware of.

19

THE VIDEOGRAPHER: Off the  
record at 12:35 p.m.

21

(At this time, a brief recess  
was taken.)

23

THE VIDEOGRAPHER: Beginning of  
Tape 7. We're back on record at  
12:55 p.m. You may proceed.

1

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2

Q Could I show you some autopsy  
photographs? I'm referring now to 103, 104  
and 105.

5

A Yes.

6

MR. BARKET: You've seen these  
before, right?

8

MR. DUNNE: I have, yes.

9

They're our autopsy photographs.

10

Q As it turns out, Arlene  
Tankleff had her right shoulder, if you  
will, was severely cut, correct?

13

A Yes.

14

Q Kind of like from her middle of  
her back going one way or the other but all  
the way across her shoulder, and she had  
several puncture wounds on her back as well,  
correct?

19

A Yes.

20

Q And we know from the autopsy  
report that there were actually blows to the  
back of her head as well, correct?

23

A Yes.

24

Q None of those details, which  
would have only been known to the killer,

1

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are in the confession; are they?

3

A Not the specific wounds but the fact that he stabbed her, it's in here.

5

Q But what's in there is the information that was available to police at the time you're taking interrogation?

8

A Well, it was available to him. He's the one who did it. He told us.

9

Q According to you. We talked about this yesterday, and I think we talked about it with Detective Rein, that you're looking for information that would only have been known to the killer. You don't want the confession to be a reflection of what the police knew at the time; do you?

17

A No, I want to know --

18

Q But isn't it true that that's largely what we have here. We have a confession that reflects information that was available to you, Detective Rein, Sergeant Doyle.

23

A No.

24

Q The knife, the barbells, the location of the rooms, the blows to her head

1

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2

and her throat cut, was all information that  
was available to the police at the time,  
right? I'm right about that; aren't I?

5

A Yes, to a certain extent, yes.

6

Q And the information that was  
not available to you, that she was attacked  
from the rear, that the back of her head was  
smashed in, that her shoulder was cut in the  
back, that she was stabbed in the back,  
that's not in the confession; is it?

12

A No.

13

Q And the smudges -- the blood  
smudged on Marty's bedroom wall that turned  
out to be gloved prints; didn't it?

16

A Not that I'm aware of.

17

Q You're not aware that the  
smudge marks there had a pattern that  
indicated that somebody was wearing gloves?

20

A Not that I'm aware of.

21

Q Okay. You really don't know,  
even as you sit here now, that the testimony  
at the trial was that there was gloved-like  
print on the wall next to the switch or  
below the switch in Marty's room? You're

1

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2 not aware of that?

3 A I don't remember that.

4 Q Okay. Well, in any event,  
5 we'll find out a little later if I'm right  
6 about that, but that's not in the confession  
7 either; is it?

8 A What's not?

9 Q The killer wore gloves.

10 A No.

11 Q So what we have is a confession  
12 that contains information that was available  
13 to the police at the time and no information  
14 that was not available to the police at the  
15 time.

16 MR. DUNNE: I'm going to object  
17 to the form of that, but you answer  
18 that as best you can.

19 A I don't know in retrospect  
20 where -- I mean it's been a long time since  
21 I thought about this, but I don't know how  
22 much further we would have kept going with  
23 the written portion of his confession  
24 because we were stopped, so I could not -- I  
25 was precluded from asking him anything

1

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further, even during the written, if I  
wanted to continue that written.

4

Q You had Marty from 7:40 until  
1:20, right?

6

A Right.

7

Q So that's how many hours? Is  
that almost six hours, five hours and  
40 minutes?

10

A Yes.

11

Q You questioned him at the scene  
repeatedly, right?

13

A Yes.

14

Q You had Sergeant Doyle question  
him. You had Detective Rein question him,  
right?

17

A Yes.

18

Q You brought him back to  
headquarters, correct?

20

A Yes.

21

Q You isolated him, right?

22

A Yes.

23

Q Put him in a room, right?

24

A Yes.

25

Q You questioned him for several

1

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2

hours in that room, correct?

3

A Yes.

4

Q Your excuse now for not getting other details from him is you didn't have enough time with him?

5

MR. DUNNE: I'm going to object to the form of the question and the characterizations contained in there, but you go ahead and answer that.

6

A What I'm saying is, I don't know what would have transpired had we had more time with him. We may have developed that as we went along. I don't know that because we were put on notice. We could not talk to him anymore.

7

Q You're not suggesting that after the body was turned over you could have asked him about the stab wounds in the back; are you?

8

A We could have if he hadn't been lawyered up.

9

Q Okay. But the confession that you say he gave you once you did the ruse

1

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2

and kind of broke him, he told you readily  
what, according to you, what happened, yes?

4

A Yes.

5

Q And it was, I think, Rein said  
yesterday that it was in the form of a  
narrative according to you all, right?

8

A Yes, but as I pointed out to  
you earlier and on several occasions, they  
don't always tell you a hundred percent of  
what happened or the truth.

12

Q How is it that what supposedly  
Marty said was only information that you  
all, the police, knew about? How did that  
happen? How did the minimization and the  
lies that he supposedly told you only  
contain information that you knew?

18

MR. DUNNE: Stop for a second.

19

I'm going to again object to the  
content and the form of the  
question. Go ahead and answer that.

22

A He told us what he told us.

23

What can I tell you?

24

Q One of the process -- Do you  
all have a process of how you -- the order

1

K. J. McCready

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2

in which you do things, you take orals, take  
a written, take a videotape?

4

A Yes.

5

Q And that's the process that you  
go through, right?

7

A Yes.

8

Q You do the orals first and then  
when you're satisfied with the orals you  
take the written; is that right?

10

A Yes.

12

Q And then once you take the  
written, you're satisfied with that, you do  
the videotaping?

15

A Yes.

16

Q And you bring in a prosecutor  
for the videotape?

18

A Yes.

19

Q You did at the time anyway?

20

A Yes.

21

Q I notice that you didn't take a  
written statement from Marty about what took  
place, according to him, for the first four  
or five times he went through this, right?

25

You didn't reduce to writing

1

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him waking up, finding his parents, calling  
911, helping his father and so forth, right?

4

A No.

5

Q When he was telling you, I  
guess, over and over again what happened  
that morning, that was not reduced to  
writing?

9

A No.

10

Q Why not?

11

A Because it was in our notes so  
it is in writing. I mean but it's not a lot  
of that other stuff that he told us and  
whatnot. That wouldn't be in the form of a  
statement.

16

Q Why wouldn't you take a written  
statement from somebody who's telling you  
what happened when they woke up in the  
morning and say, okay, here's your  
statement. Just like you were planning to  
have Marty sign this thing that you were  
writing out for him, referring to  
Plaintiff's Exhibit 97, right? You were  
planning to have him sign this, yes?

25

A Yes.

1

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Q      Certainly, when you were  
writing it you left spots for him to  
initial, yes?

5

A      Yes.

6

Q      So why didn't you take a  
statement when he was telling you, I woke  
up, I think Jerry Steuerman did this. My  
father -- I found my father. Why didn't you  
take a written statement then?

11

A      Because that's not our  
procedure to do it that way.

13

Q      What do you mean that's not  
your procedure?

15

A      We take notes.

16

Q      Why didn't you write down this  
part. This is all -- this stuff is all  
inculpatory. It's all, I did it. When he  
said, I did it, you did not write that down?

20

A      Because that's the confession.  
These are the notes.

22

Q      Is it that you didn't believe  
him the first time?

24

A      No.

25

MR. DUNNE: Again, I'm going to

1

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object. He answered the question.

3

Q I get to ask another question.

4

Did you not believe him so you did not want  
to write down the exculpatory information?

6

A What are you talking about?

7

Q At some point you decided to  
reduce what Marty was telling you orally?

9

A Right.

10

Q Not simply take a written --  
take whatever notes you all said were taken.  
But at some point you said, I'm not just  
going to write down on a pad what he said.  
I'm going to write out a written statement  
as to what he's saying so he can sign it.

16

By the way, when he signs it,  
he swears to it; doesn't he?

18

A Yes.

19

Q That's part of the process?

20

A Yes.

21

Q A notary comes in asking him to  
swear to tell the truth and you have him  
sign it, correct?

24

A We were notaries at the time.

25

Q Okay, and that's fine.

1

K. J. McCready

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So if you had completed this

3

you would have actually had him swear to the  
truth of this, correct?

5

A Yes.

6

Q What I'm asking is, why when  
he's telling you other things, before he  
begins to make what you call admissions, why  
are those things not committed to writing  
and he swears to those?

11

A Because they are only notes.

12

It's not a statement. I'm not taking a  
statement from him at that point in time.

14

Q I know that you're not. I'm  
not being clear, I'm sorry.

16

I know that you're not taking a  
statement there. What I'm asking you is,  
why don't you?

19

A There is no reason to do that.  
We have the notes.

21

Q But you have the notes of this  
too.

23

A I have the notes of that. I  
have the notes of all the other stuff. The  
non-inculpatory stuff, we have all the

1

K. J. McCready

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notes.

3

Q But why do you not reduce the non-inculpatory statements to a written statement, to a written statement that he would sign and swear to the truth of?

7

A Because we just don't do that. That's not -- We don't do that.

9

Q Is it that you did not believe what he was saying before that?

11

A I didn't believe initially. As I read my report, you'll see that when we get to the point we didn't believe him and when I pulled the ruse on him, as you call it, that's when he rolled over.

16

Q Right. What would you call it? I called it a ruse. Do you have another name for it?

19

A No. Well, you know, a lot of people would call it trickery and deceit but it's -- I don't know. It's a ruse.

22

Q It is what it is, right?

23

A Yeah.

24

Q You lied to him and --

25

A Yes.

1

K. J. McCready

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2

Q -- and what happened happened.

3

I guess at some point you decide to move from the orals that he was giving you that supposedly Rein is writing down to, okay, we have the orals now let's reduce the orals to a written statement, correct?

8

A Yes.

9

Q As far as you got -- You got pretty far into this, right? You got to the part where it says, "I hit her four or five times in the head. She fought with me. I went to the kitchen, got a knife. I ran back with the knife. I cut her throat. I don't know how many times but I stabbed her also; mostly I cut her throat and neck," right?

18

A Isn't that what that autopsy shows.

20

Q It shows the wounds. This reflects wounds to her?

22

MR. DUNNE: Well, objection to the characterization. The evidence will speak for itself.

25

Q Does it say in here, I stabbed

1

K. J. McCready

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2

her in the back. I cut her shoulder. I hit  
her in the back of the head?

4

A No.

5

Q Okay. It reflects what was at  
least visible on Arlene as she was lying  
before she was turned over?

8

MR. DUNNE: I'm objecting to  
the form of that question. That's a  
characterization of evidence. The  
evidence will speak for itself. You  
can answer the question as best you  
can.

14

A Say the question again.

15

(The requested portion was read  
back by the court reporter.)

17

Q The written statement reflects  
what was visible on Arlene as she was lying  
there, whether you remember seeing it or  
not, true?

21

MR. DUNNE: My objection stands  
again to that question as stated but  
go ahead.

24

A I think that encompasses, based

25

on the fact -- Let me see that a second,

1

K. J. McCready

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please.

3

Q Sure.

4

A When he says, I stabbed at her also. Again, he didn't tell us that he stabbed her in the back. He stabbed at her.

5

Q You didn't know that she had been stabbed in the back when you were talking to him; did you?

6

A Did I know it?

7

Q Right.

8

A No.

9

Q No police officer knew; did they?

10

A Not that I'm aware of.

11

Q It was not visible to any police officer; was it?

12

A Not that I'm aware of.

13

Q What I'm asking you about -- to get back to my line of questioning, which is that you got pretty far into this. You're writing this down for him to swear to, right?

14

A Yes.

15

Q So you made a decision to go

1

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please.

3

Q Sure.

4

A When he says, I stabbed at her also. Again, he didn't tell us that he stabbed her in the back. He stabbed at her.

5

Q You didn't know that she had been stabbed in the back when you were talking to him; did you?

6

A Did I know it?

7

Q Right.

8

A No.

9

Q No police officer knew; did they?

10

A Not that I'm aware of.

11

Q It was not visible to any police officer; was it?

12

A Not that I'm aware of.

13

Q What I'm asking you about -- to get back to my line of questioning, which is that you got pretty far into this. You're writing this down for him to swear to, right?

14

A Yes.

15

Q So you made a decision to go

1

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from the orals to the written and you're  
writing it out and you're writing it down as  
he's telling it to you, correct?

5

A Yes.

6

Q You're not challenging?

7

A We're questioning him again,  
asking him questions.

9

Q But you're not challenging him  
at all, you're not saying, I don't believe  
this, I don't believe that; are you?

12

A No, not at that point.

13

Q Okay. So what's happening, and  
this is kind of -- what's happening is after  
he makes these oral admissions, you're then  
documenting what it is, what you believe to  
be his inculpatory statements, right?

18

A Yes.

19

Q You're going to write it out  
for him, right?

21

A Yes.

22

Q And then you're going to  
videotape him saying the same things?

24

A Yes.

25

Q So what we'll end up with and

1

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2

you've done this hundreds of times, right?

3

A Yes.

4

Q You have a set of orals, right?

5

A Uh-hum.

6

Q You have whatever notes you have on the orals. You can testify to the orals, right? Then you have a written statement, right? And that's going to reflect -- What was in the orals but it will be written out in the first person, correct?

12

A Yes.

13

Q First person being Marty Tankleff, I did this and I did that, right?

15

A Yes.

16

Q And then you're going to have a videotape that's going to repeat what was in the written statement and what was in the orals?

20

A Yes.

21

Q So when you're saying that you didn't know what was going to come had you had more time with him --

24

A I don't know.

25

Q -- nothing would have come of

1 K. J. McCready

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2 it, you would have just repeated what was in  
3 the orals or what was in the written?

4 MR. DUNNE: I'm going to object  
5 to the form and the suggestions. Go  
6 ahead answer the question part of  
7 that.

8 A If we were not put on notice,  
9 we could have had Marty there for 24 hours  
10 and kept talking to him.

11 Q What would you have done with  
12 him after you had taken a written statement  
13 from him?

14 A Well, we would have waited till  
15 we found out what we did find at the scene  
16 there and then asked him questions about  
17 that.

18 Q And then that would have been  
19 incorporated into the statements?

20 A Most definitely.

21 Q Okay. All right.

22 MR. BARKET: I think that's a  
23 good spot to break. We'll come back  
24 after lunch.

25 THE VIDEOGRAPHER: Going off

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the record at 1:11 p.m.

(At this time, a recess was taken in order to accommodate a lunch.)

THE VIDEOGRAPHER: Back on record at 2:06 p.m. You may proceed.

CONTINUED EXAMINATION BY

MR. BARKET:

Q      Good afternoon, Detective. Mr.  
McCready, sorry.

A Detective is fine.

Q Okay. I want to -- I just ask you, you said there are six people on your team or were six people on your team at that time?

A      Seven counting the sergeant.

Q Okay. Who were they?

A Norman, myself, Bob was the sergeant, John Pfalzgraf, Mike Carmedi, Bobby Anderson, and I forgot who -- Maybe somebody knows.

MR. BARKET: Anybody refresh his memory? I don't want to leave a

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2 blank for just this.

A Tony Ligaza, that's right.

4 Q Thanks. At the time Detective  
5 Rein was your partner, right?

6 A Yes.

7 Q Was he your partner till you  
8 retired?

9 A Yes.

10 Q Who was your partner before  
11 that?

12 A Bill Mahoney.

13 Q In homicide, right?

14 A Yes.

15 Q How about before that?

16 A In homicide?

17 Q Yes.

18 A Tommy Gill.

19 Q Anybody else as a partner in  
20 homicide?

21 A Not that I remember.

22 Q I'm going to ask you some  
23 questions, if I can, about the Diaz case.  
24 Do you remember that?

25 A Yes.

1 K. J. McCready 361

2 Q Okay. Just to -- Again, like I  
3 said yesterday, I'm not making allegations,  
4 I'm asking you about them.

5 A Okay,

6 Q And so I want to do that, kind  
7 of to lay the background. That was a murder  
8 case? Diaz was charged with murder?

9 A Yes.

10 Q And at some point in time you  
11 were involved in interviewing witnesses; is  
12 that right?

13 A Yes, not witnesses to the  
14 murder but witnesses.

15 Q Witnesses, right.

16 A Yes.

17 Q I guess Judge Nan ended up  
18 concluding, right, that he believed that you  
19 had committed perjury in some fashion; is  
20 that right?

21 MR. DUNNE: I'll object to the  
22 form. I'm not sure that's correct  
23 but for our purposes, go ahead.

24                   A       Well, as you pointed out,  
25                   everybody is entitled to believe what they

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want to believe, but I did not commit perjury.

Q I want to lay the foundation  
and then we'll get into the details of it.

I think Judge Nan concluded that he did not find your testimony credible in some regard; is that right?

A That's right.

Q        And as a result of that, in part and some other things, there was a referral made to the State Investigation Commission?

A Yes

Q And they actually did an investigation. And again, just to lay the background, they also concluded that you were -- I think they actually used the term -- Well --

MR. DUNNE: They did.

Q They actually used the term perjury in connection with your testimony there?

A I know they did, but I don't care what they think.

1 K. J. McCready

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2 Q In that instance, you had a  
3 judge and an independent State investigative  
4 body saying that you committed perjury in  
5 the course of testifying in a murder case?

6 A That's correct.

7 Q Now, let's talk a little about  
8 the details of what happened there. And  
9 correct me if anything I say is wrong, of  
10 course, but you were interviewing some  
11 witnesses, some --

12 A Railroad workers.

13 Q Railroad workers. And there  
14 was some question, was there not, about how  
15 they identified Mr. Diaz, right?

16 A Yes.

17 Q Okay. And if I understand it  
18 correctly, you initially reported to the  
19 DA's office and testified that they  
20 identified him from a newspaper article that  
21 contained Mr. Diaz's photograph; is that  
22 right?

23 A That's correct.

24 Q And you knew at the time that  
25 part of your job as a detective is to

1 K. J. McCready

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2 conduct identification procedures, right?

3 A Yes.

4 Q And unlike what they -- and  
5 identification procedures is something you  
6 need to be trained to do, right?

7 A Yes.

8 Q Unlike what they do on TV, you  
9 just don't show a Polaroid to somebody and  
10 say, is this the guy and they say yes.  
11 There is actually processes you have to go  
12 through.

13 A Yes, but there is --

14 Q Well, there's some training  
15 involved in this, yes?

16 A Yes.

17 Q And part of what happens is, if  
18 there are identification procedures, I think  
19 this was true even in the eighties, you have  
20 to give -- not you but law enforcement, the  
21 DA's office specifically, has to give notice  
22 of those identification procedures to the  
23 defense?

24 A With regard to Wade situation,  
25 I would think so. I don't necessarily think

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so in a confirmation identification process.

3                   Q        Okay. You're actually correct,  
4 right, that there are some instances where  
5 you do a line-up or a photo pack where  
6 you're showing a photograph of an individual  
7 that's not known to the person and asking  
8 him to identify them. Those have to be  
9 notified -- Those procedures have to be --

10 A Right.

11 Q -- noticed. The defense has to  
12 be given notice of them, right?

13 A Yes.

14 Q But if you're just showing a  
15 picture to confirm that you're both talking  
16 about the same person and the witness knows  
17 the individual, then you don't?

18 A Right.

19 Q Right. So what happened here  
20 was, I guess you reported and ended up  
21 testifying, that the witnesses had  
22 identified Mr. Diaz from newspaper  
23 photographs, right?

24 A That was my belief at one  
25 point, yes.

1

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2

Q Okay. So that's what you  
testified to, right?

4

A Yes.

5

Q And then, when it became  
apparent that there was no newspaper  
photographs ever published of the  
individual, you came back and testified that  
that was a mistake, right?

10

A Yes.

11

Q And that what, in fact, had  
happened is you had shown them a single  
picture of Mr. Diaz and they identified him  
from that picture?

15

A Yes, they did. Let me go back  
a little bit here. What happened was they  
told me that they saw him in the newspaper.  
Now, you both know when you assume something  
you make an ass out of you and me, right, so  
my mistake was I assumed that they saw his  
picture in the paper.

22

When I spoke to them about it,  
they said they saw him in the newspaper  
when, in fact, they actually only saw his  
name in the newspaper but they knew him.

1

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2

And I showed them one

3

photograph of Diaz and I said, is this the  
guy you're talking about and they all three  
said yes.

6

Q Okay. When you testified initially, did you testify that they had identified -- Did you testify about that single photograph that you showed to them or did you just tell the court about the newspaper?

12

A I did yes, I did. I turned around and told them.

14

Q Well, no, initially, before it was discovered that the photographs weren't in the paper --

17

A No.

18

Q -- did you tell the court about the single photograph?

20

A No.

21

Q So that what happened was -- and I think we all agree on kind of the sequence here -- is that you testified that the witnesses identified the individual from a newspaper photograph, yes?

1

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2

A Yes.

3

Q But initially you didn't tell  
the court about the photograph that you  
showed them, correct?

4

A No.

5

Q When you say no, I'm wrong or  
I'm correct that you did not do that?

6

A No, no, I did that. Yeah.

7

Q Let me back up again, sorry.

8

That initially you told the court only about  
the newspaper identification?

9

A Right.

10

Q You did not tell them, the  
court, about the single photograph you  
showed the witness initially; am I correct?

11

A Right.

12

Q And then it was discovered that  
the newspaper did not have a photograph in  
it, true?

13

A Yes.

14

Q And then you went back to court  
and testified that you said, I actually did  
show them a single photograph, correct?

15

A Yes.

1

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Q And your testimony is that that  
was confirmatory, right?

4

A Yes.

5

Q Not that you were trying to  
hide an improper identification procedure?

7

A No, I was not.

8

Q And you would agree with me  
that kind of cutting corners or fooling with  
identification procedures would be quite a  
problem; wouldn't it?

12

MR. DUNNE: I'll object to the  
form of the question but go ahead  
and answer that.

15

A That would have been a problem  
had it been a Wade issue, but it wasn't.  
Like you said, it was a confirmatory  
identification. Once the railroad workers  
knew him from him sleeping on the train so  
it's like me if I go back to Hauppauge and  
somebody says, do you know Bruce Barket? I  
said yeah, I just recently met him. Oh, is  
that him? Yeah, that's him.

24

Q Oh, I'm just curious why didn't  
you just tell the court about that if it was

1

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2

just a regular old --

3

A I wasn't asked until after --

4

till Mr. Gianelli asked me.

5

Q Nobody asked you if you had shown a single photograph to the witnesses?

6

A No.

7

Q And it kind of moved to the general, for a moment anyway, I may come back to the details, but what I was saying is identification testimony is fairly important testimony, right?

8

A Yes.

9

Q And often times you have witnesses who don't know an individual or only have seen them once or twice and you have to do these identification procedures, right?

10

A Yes.

11

Q And in those cases it really is a problem to show a single photograph to a witness; isn't it?

12

MR. DUNNE: I'll object to the form of the question but go ahead.

13

MR. BARKET: Actually, he's

1

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2

right. Let me withdraw the  
question.

4

Q It's improper -- you know it to  
be improper to show a single photograph to a  
witness who is a stranger to a suspect;  
don't you?

8

A It only depends if it's a --  
Bruce Barket did the murder and you show  
them one photograph of Bruce Barket. That  
would be improper. But if I showed him five  
photographs and said, which one is the guy  
you're talking about, and they say that guy,  
then it's part of a Wade issue and therefore  
that becomes a valid photo spread and et  
cetera, et cetera, et cetera.

17

Q And then, I think we're saying  
the same thing. And the reason why it would  
be improper to show the single photograph of  
the suspect to a witness is that it ends up  
suggesting to the witness that the  
perpetrator is the person in the photograph  
and the perpetrator -- excuse me.

24

Let me start again. The reason  
why it would be improper to show a single

1

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2

witness a single photograph to a witness is  
that it is suggestive; is that right?

4

That's the phrase that's used?

5

A Yes.

6

Q Right. We want the witness to  
tell us what they remember and who they  
think committed the crime, right?

9

A Well, see this is where you and  
I are going to have a little problem because  
they didn't witness any crime.

12

Q Well, whatever they are a  
witness to.

14

A They're a witness to him  
sleeping on the railroad train that was it.

16

Q Okay. But I'm not talking  
about that case in particular. I'm talking  
generally.

19

A Oh, yeah, fine.

20

Q The reason why it's improper to  
do that is because we don't want the witness  
to make an identification based upon a  
suggestion by the police officer, right?

24

A Right. Well, especially if  
they're a witness to the crime.

1

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Q Right. And you don't want to  
show a single photograph because it would  
end up tainting the witness's testimony --  
they might end up -- Is that true?

5

A Yes. It could be in a  
situation that I'm talking about with regard  
to you or somebody witnessing you do a crime  
and I only show them one picture, that's  
wrong. That's improper.

10

Q And we agree.

11

A They didn't witness any crime.

12

Q Well, actually, the prohibition  
against showing a single photograph to a  
witness applies whether or not the person  
witnessed a crime or is identifying the  
subject in the courtroom for some other  
reason, right?

13

A No. No. I don't think so. I  
don't believe that's the case.

14

Q Okay. Well, you think that if  
a witness is going to come into the  
courtroom and identify the Defendant and  
say, I saw the Defendant do X, even if X  
wasn't a crime, that you can then suggest to

1

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2

the witness who the Defendant is?

3

A Like I said, this was a confirmatory identification. They knew him.

5

Q And I'm not disputing that right now. We're not talking about that.

7

I'm talking generally speaking, right, you said we agree that it would be improper to show a single photograph to a witness, right?

10

A It depends on the circumstances.

11

Q Say a witness who's a stranger to the suspect?

15

A Yes.

16

Q That would be improper. And the reason why it would be improper is that the witness may end up making identification of the Defendant not based upon their independent memory but based upon the single photograph a police officer showed them?

22

A Yes, but they've had --

23

Q We're not talking Diaz, just generally speaking.

25

A Oh, right, yes.

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2 Q That's true?

3 A Yeah.

4 Q For a police officer -- I'm not  
5 saying you did this or frankly didn't do it,  
6 I wasn't there -- but for a police officer  
7 to engage in that kind of improper conduct  
8 it would be a serious misstep by the officer  
9 or detective; would you agree?

10 MR. DUNNE: I'll object to the  
11 form of the question but go ahead  
12 and answer that.

13 A Yes.

14 Q That making sure --

15 A We're not talking about the  
16 Diaz case here.

17 Q Correct. I'm not saying you  
18 did or didn't do anything improper.

19 A Right.

20 Q But conducting identification  
21 procedures and showing witnesses  
22 photographs, lying about that would be an  
23 egregious act of misconduct by an officer;  
24 would you agree?

25 MR. DUNNE: I'll object to the

1

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form but go ahead.

3

A Yes.

4

Q And it would be -- I mean just  
to draw an analogy, it would be just as bad  
about lying about how you obtained a  
confession from a suspect.

8

MR. DUNNE: Again, I object to  
the form of the question.

10

A No. You're talking apples and  
onions here. In a Wade situation, I would  
have done a photo spread. What we're  
talking about is a confirmation ID here and  
it has nothing to do -- there is no  
comparison between a confirmation  
identification and a confession.

17

Q Not saying that there is. I'm  
saying that if a detective or police officer  
were to lie --

20

A Yes.

21

Q -- about how they conducted an  
identification procedure, that act of lying  
about eyewitness identification would be  
just as bad as lying about a confession?

25

MR. DUNNE: I'm going to object

1 K. J. McCready 377

2 to the form. That's kind of a  
3 suggestive statement.

4 A That would be common sense,  
5 yes.

6 Q Of course, right?

7 A Yes.

8 Q You don't want detectives lying  
9 about how they are conducting important  
10 parts of an investigation?

11 A That's right.

12 Q Be it how they take confessions  
13 or how they do identification procedures?

14 A That's right.

15 Q If a detective is willing to  
16 lie about one, you might think they are  
17 lying about the other?

18 A Yes, you can draw an inference  
19 but that's not --

20 Q You're saying that's not what  
21 you did with Diaz?

22 A No.

23 Q Okay. In the course of your  
24 preparation for Diaz and the testimony, did  
25 any prosecutor ever ask you if you showed a

1

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2

single photograph to a witness?

3

A No.

4

Q One of the things that I want  
to talk to you about, and I think that --  
Crime scene photographs and showing those to  
witnesses.

5

A Yes.

6

Q Did you do that in the Martin  
Tankleff case?

7

A I may very well have.

8

Q When we're talking about crime  
scene photographs, I'm talking about some of  
the kind of rather graphic pictures of the  
mother or the blood. Did you show those  
kinds of pictures to civilian witnesses in  
this case?

9

A I may have.

10

Q Well, the attorney general's  
office who conducted the investigation after  
Marty's case was reversed, after his  
conviction was reversed, indicated that in a  
memo to the court, and one of the reasons  
why they decided not to go forward with any  
prosecution of Martin Tankleff, specifically

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sited misconduct on your part in showing  
photographs to witnesses; do you remember  
that?

5

MR. DUNNE: I'll object to the  
form of that. Go ahead and answer  
that.

8

A I remember that but they're  
wrong. I mean we use photographs all the  
time in investigative tools.

11

Now, I was asked why did I show  
McNamara photographs. To be honest with  
you, I don't remember. I don't remember. I  
don't know what the question was or what the  
situation was, but showing a crime scene  
photo to an individual there's nothing wrong  
with that. We use them as investigative  
tools. But I don't know what I was trying  
to glean from maybe Mr. McNamara or  
whatever. I don't remember that whole  
conversation with McNamara about that. It  
was so insignificant, I don't remember.

23

Q Well, also, Dan Hayes reports  
that you showed him a crime scene photograph  
just before his testimony in the criminal

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trial as well. You brought him into the  
evidence room and showed him crime scene  
photographs; is that true?

5

A Not that I'm aware of. I don't  
remember showing him. The only one I  
remember showing photographs to is McNamara  
and I would be damned if I could remember  
why.

10

Q Well, the graphic photographs,  
some of which we've looked at here, and all  
of us, I guess, except for the court  
reporter who understandably is kind of  
revolted by them, what possible  
investigative tool could you think of for  
showing McNamara --

17

A I don't remember. If I  
remembered, I'd tell you.

19

Q Can you think of any proper  
reason for doing that?

21

MR. DUNNE: I'll object to the  
characterization in the question but  
go ahead and answer.

24

A I don't know why I showed him  
the photograph.

1

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2

Q There were -- Did you show  
crime scene photographs to any of the  
Tankleff family?

5

A Not that I remember.

6

Q Shari Rother?

7

A Not that I remember.

8

Q Ron Rother?

9

A Not that I remember.

10

Q There were some civilian  
witnesses who testified about statements  
that Marty had made over the course of the  
summer. Apparently, Marty was bragging  
about his wealth; is that right?

15

A Yes.

16

Q There were a couple of girls,  
right, who had said he was kind of bragging  
about how rich he would be or how rich his  
parents were; something like that?

20

A Yeah, words to that effect.

21

That he would be rich if his parents were  
dead or something like that.

23

Q Actually, and they testified to  
something along those lines that Marty was  
saying, if my parents weren't around I could

K. J. McCready

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have any car I wanted or any house I wanted  
or something like that?

A      Yeah, something like that.

Yes.

Q Did you show those girls crime scene photographs?

A Not that I remember.

Q Let's just take it out of the Martin Tankleff case for a second, and I want you to assume two things. A, that there are graphic pictures and B, that the witness had nothing to do with the crime scene. In other words, they didn't witness the crime, there was no need to show them crime scene photographs to document or have them testify about where things happened.

Can you think of any legitimate reason why you would show crime scene photographs to civilian witnesses?

MR. DUNNE: I object again to  
the parameters of the question.

Q Not McNamara. I know you say  
you don't remember McNamara. I'm saying  
generally is there any or legitimate reason

1

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2

for doing that?

3

MR. DUNNE: I object to the

4

form of the last two questions. Go

5

ahead, Detective.

6

A We use crime scene photographs

7

as investigative tools.

8

Q How?

9

A It depends on the

10

circumstances. I don't know. It depends --

11

I don't remember why I showed McNamara that

12

photograph. What do you think I run around,

13

hey guys, look at this, look at this. No,

14

you don't do that.

15

Q No, I guess the implication

16

from the attorney general's office is that

17

you're using it to push the witnesses to

18

color their testimony in a way that would be

19

helpful to the prosecution to get them on

20

your side.

21

MR. DUNNE: Again, is that a

22

question or a statement?

23

MR. BARKET: That's a question.

24

MR. DUNNE: Well, is the

25

question did you do that?

1

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2

Q Is that the motivation for  
doing that?

4

A No.

5

Q Did you show pictures to the  
civilian witnesses and say to them, look  
what this kid did; look what we have to say  
to them, your testimony is important, we  
have to put this murderer away?

10

A No.

11

Q You're certain of that?

12

A Absolutely certain.

13

Q You're as certain about that as  
you are about the way the confession was  
taken?

16

A Yes.

17

Q If we were to find out that you  
were not being truthful about showing the  
crime scene photographs to the civilians,  
should we also doubt your word about how the  
confession was taken?

22

MR. DUNNE: Objection. C'mon

23

Bruce, that's not a fair question.

24

That's for the purpose of eliciting  
facts.

1

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Q It's reported that you showed  
crime scene photographs to a number of  
different civilian witnesses and you're  
saying the only person you remember is  
McNamara?

7

A The only one I remember showing  
it to was McNamara.

9

Q But you said you did this as a  
matter of routine, you used crime scene  
photographs?

12

MR. DUNNE: Again, I object to  
the characterization of the  
question. Go ahead and answer that.

15

A We use crime scene photographs  
as investigative tools.

17

Q I guess I'm asking you -- Look,  
give me any or give us any legitimate reason  
for showing crime scene photographs to  
witnesses?

21

MR. DUNNE: I object to the  
form of the question. Go ahead.

23

A I don't know how many times I  
gotta tell you. It depends on what's going  
on. We use them as investigative tools.

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Now, I don't remember why I used that particular photograph or what photographs I even showed McNamara but the bottom line is I don't run around showing pictures just for the hell of showing pictures.

7

Q This isn't just me asking these questions, and the attorney general's office wrote this and I'm going to ask you if you read this.

11

"The behavior of one of the detectives in the case, Detective James McCready, retired, was problematic in this case. The evidence that we have collected shows that he showed crime scene photographs to witnesses when there was no legitimate law enforcement reason for doing so."

18

Can you --

19

A You know, that's the attorney general's office, right?

21

Q Yes.

22

A I'll be honest with you, I don't give a damn what they think. That's what they think. They have no idea. They weren't there. They weren't shown the

1

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2

photographs. I think -- You don't want to  
know what I think.

4

Q Well, I just asked you what you  
thought. Whether I want to know or not,  
feel free to answer.

7

A That's not what I'm talking  
about, not with regards to that question.  
I'm talking what I think about some other  
things, that's all.

11

Q Look, I mean you had a job to  
do back then, right?

13

A Yes.

14

Q You had a job to do, you  
thought Marty Tankleff killed his parents,  
right?

17

A Yes.

18

Q And you thought that if you had  
shown crime scene photographs to individuals  
you would have done so in furtherance of  
your investigation in the prosecution of  
this case; is that right?

23

A Yes.

24

Q You were doing it because you  
thought it would help the case, yes?

1

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2

A I don't know why. I don't  
know. Whoever said I showed them  
photographs, I think I would remember it but  
I don't remember. The only one I remember  
showing photographs to is McNamara.

7

Q That's not the question. The  
question I asked you was, if you were doing  
it, and I guess you were at least to  
McNamara, you were doing it because you  
thought it would help the prosecution of  
Marty Tankleff, right?

13

MR. DUNNE: Again, I object to  
the form of the question but go  
ahead.

16

A I don't know whether it would  
have helped or hurt, but obviously I don't  
remember why McNamara -- why he wanted to  
see something. I don't remember why I  
showed it to him.

21

Q You said before that you  
weren't just showing photographs.

23

A Right, but I don't remember the  
back and forth between me and McNamara or  
why the crime scene photographs even came

1

K. J. McCready

389

2

up.

3

If I had had photographs, I  
might have even asked Marty to initial some  
of them.

6

Q That would have been a  
legitimate --

8

A That's something if he didn't  
get lawyered up, as I said before, if we had  
him for 24 hours we could have confirmed  
more and more and more.

12

Q You would have gathered more  
information and put more information into  
the confession?

15

A I would have tried to elicit  
more information from him but I couldn't.

17

Q At the point in time that you  
were taking the oral statements, you were  
done taking the orals, right? Nobody  
interrupted?

21

A Up to that point.

22

Q Nobody interrupted you. Nobody  
stopped you from questioning further at that  
point?

25

A No.

1

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2

Q You were done with the orals

3

and you decided to move to -- let me finish  
my question -- you were done with the orals  
and you decided to move from the oral  
statements, move from that phase to writing  
out the written statements?

4

A Yes.

5

Q So it's the written statement  
that was interrupted, not the oral  
statement, correct?

6

A Right.

7

Q I want to go back to the crime  
scene photographs if I can. It also says in  
here -- I'm reading from the attorney  
general's memo to the court dismissing the  
case against Marty Tankleff, and I want you  
to comment on this.

8

"Detective McCready acted alone  
when he showed photographs to others. Based  
upon our investigation, no other law  
enforcement representative with whom we met  
from either the Suffolk County Police  
Department or the Suffolk County District  
Attorney's office was aware that Detective

1 K. J. McCready

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2 McCready had engaged in such a behavior and  
3 all of them stated that it was improper.

4 Detective McCready himself  
5 recognized that it was improper. He told  
6 one witness that he was behaving improperly  
7 even as he showed the photographs to that  
8 witness."

9 There's two parts of that that  
10 I want to ask you about. The first part is  
11 that according to the attorney general's  
12 office, that fellow police officers and  
13 people at the DA's office agreed that you  
14 showing these photographs was improper.

15 I'll give you a chance to  
16 respond to that.

17 A I don't know who you're talking  
18 about. I don't have no idea who you're  
19 talking about. The only person I remember  
20 showing a photograph to is McNamara and I  
21 don't remember why.

22 Q I'm not talking about McNamara.  
23 I'm talking about the attorney general's  
24 office having interviewed people from the  
25 Suffolk County Police Department, other

1

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2

members of your squad, other members of the  
District Attorney's office. They said they  
didn't know you were doing it and that doing  
so was improper.

6

MR. DUNNE: I'm going to object  
to the form.

8

Q Do you have a comment on that?

9

A No, I have no comment. I have  
no idea.

11

Q They also said that when they  
asked you about it you had recognized that  
it was improper.

14

A I what?

15

Q That you said it was improper.

16

You agreed that it was improper to do.

17

A I don't remember saying that to  
them.

19

Q Did you tell McNamara that as  
you were showing him the photographs that  
you shouldn't be doing this but that you  
were doing it anyway?

23

A I don't remember saying that at  
all, no.

25

Q And as you sit here now, can

1

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2

you offer up any legitimate purpose for  
showing crime scene photographs to a  
civilian witness?

5

MR. DUNNE: Other than what's

6

he's already been asked?

7

A With respect to this case?

8

Q Any case.

9

A I told you we use them as  
investigative tools.

11

Q I understand that, but what I'm  
gathering from reading the attorney  
general's report is that the investigative  
tool or technique that you're employing is  
to gain -- push the witnesses further into  
the prosecution's corner by showing them the  
horror of the crime and accusing the  
Defendant of it?

19

A No.

20

Q Because --

21

A I didn't do that.

22

Q Other than that, other than  
doing it for that reason, what possible  
reason would you have to show graphic  
photographs to civilian witnesses?

1

K. J. McCready

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2

A Didn't I answer that five times  
already?

4

Q You said that you do it for law  
enforcement reasons.

6

A Yes.

7

Q You have not given me or us any  
reason.

9

A Well, it depends on the  
purpose. I have no idea.

11

Q Name one. Any.

12

A Okay. Let's say there was  
another person in the house with Marty that  
night, right, and they came in and they saw  
Arlene laying the way she was, whatever, I  
might show them that photograph and say, is  
this what you saw. And if they say yes,  
it's again confirmatory-type situation.

19

Q Was McNamara in the house?

20

A I don't know. I don't  
remember.

22

Q Was Dan Hayes in the house?

23

A No, not that I know.

24

Q Were the girls that Marty was  
bragging to about his parents wealth in the

1

K. J. McCready

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2

house?

3

A No.

4

Q We'll talk just about McNamara.

5

Forget what actually happened, can you think  
of any legitimate reason why you would have  
done it?

8

A I don't remember. If I  
remembered, I would be glad to tell you.

10

Q But it is fair to say that you  
were in the process of helping the  
prosecution build a case against a person  
that you arrested when you were showing  
these photographs, correct? You did not --

15

A Yes.

16

Q Right. I mean whatever the  
reason was it had to be to further the  
investigation --

19

A Right.

20

Q -- or the prosecution?

21

A Whatever. Or to jog their  
memory about something. I don't remember.

23

Q Same thing with Diaz that you  
weren't just out interviewing railroad  
workers, you were out trying to build a case

1

K. J. McCready

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2

against Diaz, right?

3

A Yes, yes.

4

Q And the same way you kind of engage in whatever you do with respect to interrogations. You're just not sitting around asking questions, you're trying to build a case against a person who you think committed a crime?

10

MR. DUNNE: I object to the

11

form. Go ahead.

12

A Yes.

13

MR. BARKET: I dare say that in my mind I'm done, but my mind does not control so can we take a five-minute break.

17

MR. DUNNE: Sure.

18

THE VIDEOGRAPHER: Off the record at 2:40 p.m.

20

(At this time, a brief recess was taken.)

22

THE VIDEOGRAPHER: Beginning of Tape 8. Back on the record at 3:05 p.m. You may proceed.

25

CONTINUED EXAMINATION BY

1

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2

MR. BARKET:

3

Q Detective, do you know Shari  
Rother?

5

A Shari Rother?

6

Q Yeah.

7

A Yeah.

8

Q How did you meet her?

9

A After he murdered her parents.

10

Q Are you saying you did not know  
Ms. Rother prior to the murder of Marty's

parents?

13

A No.

14

Q And how about Ronald Rother,  
did you know him before that?

16

A No.

17

Q Did you eventually go into  
business with Ron Rother?

19

A Yes.

20

Q We talked about this briefly  
yesterday.

22

A Yes.

23

Q Was some of the money that Ron  
put up from that the proceeds of the Estate  
of Tankleff?

1

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2

A Not that I'm aware of.

3

Q Sorry. Just one second. Was  
there a Mr. or Detective Genna that  
testified; do you remember?

6

A Bob Genna?

7

Q Yes.

8

A Sure.

9

Q Who is he?

10

A Right now, I think he's the  
head of the lab, crime lab.

12

Q Okay. And I asked you  
yesterday whether or not you recall -- well,  
maybe it was this morning -- whether or not  
you recall that the smudges or the blood on  
the wall near the switch, light switch in  
Marty's room was a glove-like print; do you  
remember that?

19

A Yes.

20

Q I want to refer you to the  
testimony of -- is it Detective Genna or Mr.  
Genna?

23

MR. DUNNE: No, he's a  
civilian.

25

Q So Mr. Genna or Dr. Genna, at

1

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2

pages 2460, I'm just going to read this from  
line 8.

4

"Q. What was the pattern you  
found in that particular location?

6

A. It was a chain-like  
honeycomb pattern.

8

Q. Did there come a point in  
time, Mr. Genna, after identifying  
these particular patterns on these  
six items to which you just  
referred, that you drew any  
conclusion with respect to the  
origin of those patterns which you  
are able to discern this chain-like  
or honeycomb pattern to which you're  
referring?

18

A. Yes.

19

Q. Would you please tell us  
what your conclusions and opinions  
are to a reasonable degree of  
scientific certainty with respect to  
the origin of those particular  
chain-like or honeycomb-type  
patterns?

1

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2

A. Yes. My conclusion was  
that the patterns were consistent  
with the type of pattern that you  
commonly find on the grip areas of  
the fingers or the palm area of a  
glove, either a fabric or a rubber  
glove."

3

You can take a look at it yourself.

4

Does that refresh your memory that the blood  
smear on the wall in Marty's room came from  
a gloved or a glove-like print?

5

You don't remember it from 20 years  
ago? You don't remember?

6

A No.

7

Q Point of fact, it was not only  
the wall, I think the sheets in Marty's room  
also had a similar pattern -- excuse me, the  
sheets in Marty's parents bedroom where  
Arlene was also had a similar pattern.

8

A I'm not aware of that. That's  
the first I've ever heard that.

9

Q Anything to do with the  
glove-like prints or on the sheets as well?

10

A No, not on the sheets.

1

K. J. McCready

401

2

Q Did you hear or did you become  
aware or ever see a knife print on the  
sheets?

5

A No. Now, I'm aware at this  
time that some moron up in the State lab or  
whatever claims that there's a knife print  
or something on the sheet, but I don't know  
if that's necessarily correct.

10

Q Well, when you say some moron  
up in the State police lab, let's just break  
it down a little bit.

13

In 2008, a special prosecutor  
was appointed in this case, right? You know  
that?

16

A Yes.

17

Q Thomas Spota stepped aside and  
he allowed the attorney general's office to  
conduct the investigation; you remember  
that?

21

A Yes.

22

Q And the governor agreed,  
removed him as a prosecutor, and appointed  
the attorney general's office, right?

25

A Right.

1

K. J. McCready

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2

Q And just so we're clear, Thomas  
Spota is the same Thomas Spota that is now  
the current district attorney and who was  
your lawyer back in 1991 or '92 when you  
were on trial?

3

A Yes.

4

Q And that the attorney general's  
office along with the State police conducted  
an investigation following their appointment  
as a prosecutor in this case, right?

5

A Yes.

6

Q And they took all the evidence  
and reviewed it and somebody from the State  
crime lab, State police, looked at the  
sheets from Marty Tankleff's mother's room  
and --

7

A Right.

8

Q -- indicated that there was a  
knife pattern on those sheets; you know  
that, right?

9

A Well, yes.

10

Q All right. So now, I know you  
were just being flippant. You don't know  
the individual who performed that test; do

1

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2

you?

3

A No.

4

Q You don't know if that person  
is an expert in bloodstain patterns, what  
his training or her training or experience  
is; do you?

5

A No.

6

Q So when you said that person is  
a moron, you were just being a little  
flippant and a little sarcastic?

7

A Yes.

8

Q It might be a highly-skilled  
investigator who found a knife-like print,  
right?

9

MR. DUNNE: I object to the  
form but go ahead.

10

A Excuse me. Might be.

11

Q Might be. And, of course, you  
also know, and I guess it would be fair to  
say the person might be a "moron" you just  
don't know who it is.

12

A Might be.

13

Q Might be. And, of course, we  
do know that the knife-like print was

1 K. J. McCready

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2 compared to every single knife in the  
3 Tankleff residence, right?

4 MR. DUNNE: Again, I object to  
5 the form --

6 A I didn't know.

7 Q You didn't know that?

8 MR. DUNNE: I'm going to object  
9 to the form and the characterization  
10 of the question. Go ahead.

11 A I didn't know.

12 Q And you didn't know that part  
13 of their analysis was not only that they  
14 found the knife print on the sheet, but that  
15 they compared it to every knife in the house  
16 and it didn't match a single knife in the  
17 Tankleff residence?

18 A I didn't know that was their  
19 opinion.

20 Q Assuming that's true, that  
21 would indicate that whoever committed this  
22 crime used that knife and then took it from  
23 the residence, right?

24 MR. DUNNE: Again, I'm going to  
25 object to --

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2 A I don't know.

3 MR. DUNNE: -- that on many  
4 grounds but go ahead and answer  
5 that.

6 A I don't know. Well, I don't  
7 agree with their findings so therefore I  
8 can't agree with that.

9 Q It's interesting that you say  
10 you don't agree with their findings because  
11 we just got done talking about you have no  
12 idea who the person is who made these  
13 findings.

14 A I don't.

15 Q There's no reason to suspect  
16 that the lab technician, or the criminalist,  
17 or the blood spatter or whatever, the expert  
18 that looked at this, this is not somebody  
19 that Martin Tankleff hired; is it?

20 A No.

21 Q This is somebody with the State  
22 police, right?

23 A Yes.

24 Q And because that evidence that  
25 they found is somewhat inconsistent with

1

K. J. McCready

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2

Marty's guilt, you just dismiss it and call  
the person a moron?

4

MR. DUNNE: I'm going to object  
to the characterization in the  
question. Go ahead and answer that  
as best you can.

8

A No, no. I'll tell you what, I  
spoke too fast on that because I've had  
conversations with other experts about that  
particular opinion and they don't agree with  
that opinion; so that's all I'm going to  
say. That's all I have to say.

14

Q What expert have you spoken to?

15

A Bob Genna.

16

Q Bob. You spoke to Bob Genna.  
When did you speak to Mr. Genna, Bob Genna?

18

A Last Friday night.

19

Q Last Friday night. Today is  
Wednesday. Last Friday was December 7th?

21

A Yes.

22

Q And you spoke to him in the  
context of you were talking about the Martin  
Tankleff case?

25

A I asked him one question.

1

K. J. McCready

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2

Q Where were you when the  
conversation took place?

4

A At the Detective's Association  
Christmas party.

6

Q Okay. For Suffolk, I take it,  
right?

8

A Yes.

9

Q And did you have a longer  
conversation with him? Was it just one  
question about the Tankleff case?

12

A The only thing I said to him, I  
said, what's this nonsense about this blood  
print, or knife, whatever on the sheet, and  
he disagreed with their findings.

16

Q Did you put it to him that way,  
what's the deal with this nonsense?

18

A Yeah.

19

Q What was his reaction? What  
did he say to you?

21

A He doesn't agree with their  
opinion.

23

Q Is that what he said, I don't  
agree with their opinion?

25

A Yes.

1

K. J. McCready

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2

Q That's all he said?

3

A Yeah.

4

Q Which opinion; that there was a  
knife print or that the knife print didn't  
match any of the knives in the house?

7

A I didn't get into a lengthy  
discussion about it, all right. I just  
mentioned it to him and that's what he said  
to me.

11

Q Well, even before you spoke to  
Mr. Genna, you described it as nonsense?

13

A Right.

14

Q Why?

15

A Because I felt like they were  
making things up up there.

17

Q You thought that the State  
police were making things up?

19

A Yeah.

20

Q This kind of reminds me of our  
conversation yesterday where you said --

22

MR. DUNNE: Can we just ask a  
question. I object to the colloquy.

24

MR. BARKET: Sure.

25

Q You recall yesterday saying

1

K. J. McCready

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that no evidence would ever change your view  
that Marty killed his parents?

4

A That's right.

5

Q So that any evidence that  
indicates he's innocent has to be nonsense?

7

MR. DUNNE: I object to the  
characterization in the question.

9

That's not what he said.

10

A That's not what I said.

11

MR. DUNNE: Go ahead and answer  
that.

13

Q Would you agree with me that if  
the knife print was there and it was  
inconsistent with every knife in the house,  
meaning the knife that was used had to be  
taken out of the house, that that would be  
some evidence that somebody else was  
involved in this besides Martin Tankleff?

20

MR. DUNNE: I'll object to the  
form of the question. Go ahead,  
Detective.

23

A No. To me, what that would  
mean, if there was another knife involved,  
that he disposed of the knife somewhere, not

1

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that somebody else took it out of the house.

3

Q In the 30 minutes that he had from 5:35 to 6:11, 36 minutes, we now add in that he somehow disposed of the knife in a way that it was never found?

7

A I'm not saying he disposed of the knife.

9

MR. DUNNE: Jimmy, hold on a second. I have to object to the suppositions in that question but you answered that question as he posed it.

14

A What I'm saying is that anything is possible. I still, as I pointed out many times today, I still don't believe that he gave us a hundred percent of the truth about this whole thing so that could be one of the things. It would have been nice if we had found a knife outside if that, in fact, was a murder weapon or something.

23

Q Did you even consider the possibility? I mean just kind of objectively just step back a second.

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K. J. McCready

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MR. DUNNE: Again, I'm going to  
object to the characterization and  
the colloquy.

5

MR. BARKET: Let me finish my  
question and you can object to it.

7

Q Did you even consider the  
possibility? I mean you're a human, Rein is  
human, everybody makes mistakes, that you  
just made a mistake here? Do you consider  
that possible?

12

A I didn't do --

13

MR. DUNNE: I need to put my  
objection to the form of the  
question on record. Go ahead.

16

A I didn't make any mistakes.

17

Q I didn't ask you if you did or  
didn't. I got the fact that you don't think  
you did. What I'm asking you is, did you  
even consider that maybe you got this wrong?

21

A Consider what?

22

Q That Marty is innocent.

23

A No, he's not innocent.

24

Q It never, in your wildest  
dreams, creeping conscious anywhere, thought

1

K. J. McCready

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2

Jeeze, with all this other evidence, all  
these other things, that maybe, you know, we  
made a mistake here?

5

MR. DUNNE: I'll object to the  
form of the question. Go ahead,  
Detective, and answer that.

8

A      Absolutely not. He's as guilty  
today as he was then.

10

Q      Or as not guilty today as he  
was then depending on our view, right?

12

MR. DUNNE: Counsel, you know  
the parameters. You know better.

14

Q      Am I right about that?

15

Whatever happened back then happened?

16

A      He did it.

17

Q      You weren't there; I wasn't  
there.

19

A      But he did it. You know, when  
I get up in the morning I shave my face.  
When I look at the guy in the mirror on that  
side, I like that guy. I don't know if he  
could do the same thing.

24

Q      Well, you know, I guess we can  
ask him when it's his turn, right?

1

K. J. McCready

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MR. DUNNE: I've concluded that

3

examination.

4

Q You're comfortable with the  
work you did here?

5

A Yes.

6

Q You think you put a guilty  
person in prison?

7

A Yes.

8

Q And that, if anything -- Did  
you make any mistakes in this investigation?

9

A I don't know. I don't know. I  
don't know. Not that I can think of right  
now.

10

Q Did you ever -- You gave some  
interviews to a number of media outlets.  
Did you tell Erin Moriarty that you were  
better than a polygraph at detecting when  
people lie?

11

A No, I told her -- I said I  
would like to think that I was better than a  
polygraph.

12

Q Kind of the same thing, right?

13

MR. DUNNE: Well, Counsel, come  
on. That's the answer.

1

K. J. McCready

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2

Q Why would you like to think  
that you're better than a polygraph at  
determining whether individuals are lying?

5

A Because I think I am. And a  
polygraph you can't use it in a criminal  
case. It's not reliable.

8

Q Is that why you didn't give  
Marty one?

10

A No.

11

Q When Steuerman fled to  
California, did you go out --

13

A Yes.

14

Q -- to bring him back. Why did  
you go out there?

16

A Out to Steuerman?

17

Q Yeah, why did you go get him?

18

A Because he faked his own death  
and all that stuff.

20

Q So what?

21

A And he's a witness in this  
case.

23

Q So who else went with you?

24

A Detective Sergeant Doyle and Ed  
Jabloski, assistant district attorney.

1

K. J. McCready

415

2

Q How long were you in California  
for?

4

A I don't remember. I'm thinking  
three, four to five days.

6

Q And the purpose was to bring  
Mr. Steuerman back?

8

A Yes.

9

Q I mean this wasn't about the  
time of the trial, this was much closer to  
the time of the murders, right?

12

A Yes, it was right after the  
murder.

14

Q In fact, Mr. Tankleff was still  
in a coma in the hospital alive, right?

16

A Yes, yes.

17

Q I don't suppose you said to Mr.  
Steuerman when you saw him that Seymour was  
pumped full of adrenalin, came out of his  
coma, and said that Steuerman attacked him;  
did you?

22

A Did I say that?

23

MR. DUNNE: I object to the  
form of the question.

25

A No, I didn't say that.

1

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2

Q I guess that I've heard your  
comment that Steuerman wasn't a suspect, was  
never a suspect, and that he just made your  
case more difficult by fleeing; is that  
right?

7

A Yes.

8

Q So the information that has  
come to light about Steuerman since the  
murders does not cause you to question  
whether or not he was a suspect or perhaps  
actually involved, it simply makes the  
prosecution or made the prosecution of Marty  
more difficult for you?

15

MR. DUNNE: I'll object to the  
form of the question. Go ahead and  
answer that.

18

A No, I don't think it made it  
that more difficult for us. I think it just  
brought a lot of grief and aggravation onto  
Steuerman himself because he did pull that  
act.

23

Q Okay.

24

(Continued on next page to  
include jurat.)

1 K. J. McCready

417

2 MR. BARKET: Thank you. I  
3 appreciate your time.

4 THE WITNESS: You're quite  
5 welcome.

6 THE VIDEOGRAPHER: It's 3:24.  
7 This concludes the day's deposition.  
8 We're off record at 3:24 p.m.

9 (Time noted: 3:24 p.m.)

10

11

12

13 K. JAMES McCREADY

14

15 Subscribed and sworn to before me

16 this \_\_\_\_ day of \_\_\_\_\_, 2013.

17

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20 NOTARY PUBLIC

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1

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2

CERTIFICATION

3

I, DOLLY FEVOLA, a Notary Public in  
and for the State of New York, do hereby certify:

5

THAT the witness whose testimony is herein  
before set forth, was duly sworn by me; and

7

THAT the within transcript is a true record  
of the testimony given by said witness.

9

I further certify that I am not related,  
either by blood or marriage, to any of the parties  
to this action; and

12

THAT I am in no way interested in  
the outcome of this matter.

14

IN WITNESS WHEREOF, I have hereunto  
set my hand this 30th day of January, 2013.

16

17



DOLLY FEVOLA

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WILL Shopping. It was supposed to be  
yesterday I went to get  
happened to my parents this morning.  
decided McCauley and Reid what  
MT Rights in Ward I want to tell  
Court all attorney. Having  
to me. I do not want to  
decide McCauley has experienced  
in undiscarded each of the Rights  
we face of charge  
all attorney one will be furnished for  
I know that if I cannot afford to hire  
before or during my consulting  
Right to have all attorney fees for  
I know that I have right  
will be used again we in a court of  
I know fact myself I say you and  
Reunited States  
I know that I have file Right to  
as follows.

I have been advised of my rights  
several in part free High School.  
seaside Beach Street. It is a  
1971 in Brooklyn N.Y. I live at #33  
old building been built on August 1998  
decades and says that I am 17 years  
WILL rank held being duly sworn

9/7/88

POLICE DEPARTMENT  
COUNTY OF SUFFOLK, N.Y.

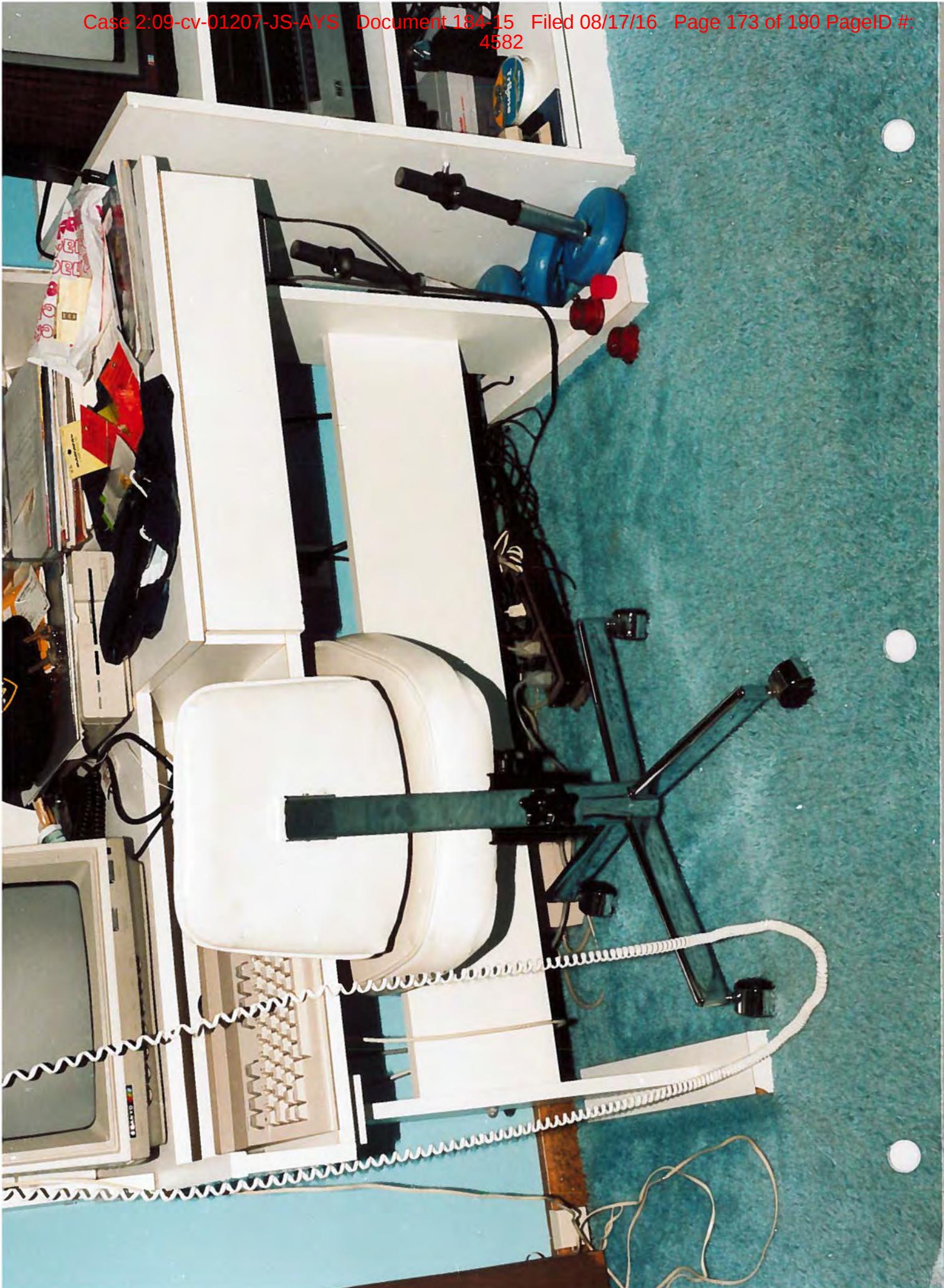


home early enough to set up the cards. I was going to my parents house because I had to go to work at 9:10 am my brother was driving me to Florida in October, they required us to leave to Florida by Saturday night we were going to stay with them after because my father didn't have his friends.

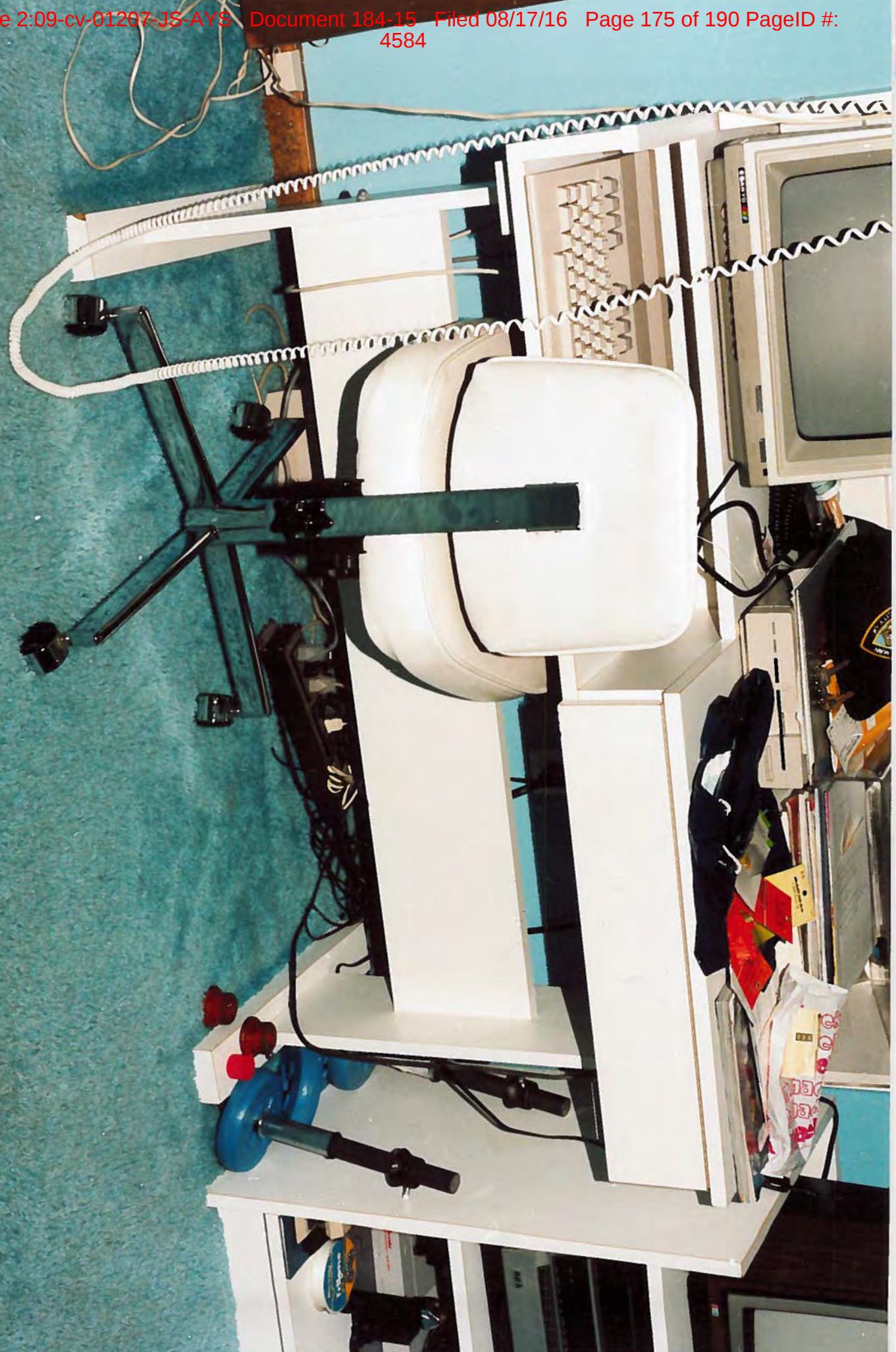
Mostly but why weren't able to get my parents home about 9:10 pm my brother was driving me to Florida in October, they required us to leave to Florida by Saturday night we were going to stay with them after because my father didn't have his friends.

I did do it, my father promised me we were going to stay with them after because I had to go to work at 9:10 am my brother was driving me to Florida in October, they required us to leave to Florida by Saturday night we were going to stay with them after because my father didn't have his friends.

In b.i. her 4 or 5 times on the  
head. She fought me. I went to  
the kitchen and got a knife. I  
had a knife. I hit her with it.  
Many times but I spared her  
also. Mostly I cut at her  
throat and neck. I hit her  
1388 D/Sgt. Hoffman Searles  
ATTY Wyrwo Fox called - nothing further



PLAINTIFF'S  
EXHIBIT  
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DF 12/12/12



PLAINTIFF'S  
EXHIBIT

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